PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(303) 299-5708** ***Complainant*,** ***v*.** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

FORMAL COMPLAINT OF AT&T CORP.

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Dated: June 8, 2017

Counsel for AT&T Corp.

PUBLIC VERSION

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FOUNDED 1866

June 8, 2017

By Hand Delivery And ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***AT&T Corp. v. Iowa Network Services, Inc.*, Proceeding Number No. 17-56; File No. EB-17-MD-001**

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits for filing the **Public Version** of its Formal Complaint against Iowa Network Services, Inc. d/b/a Aureon Network Services ("INS"). Consistent with the Commission's rules and the February 24, 2017, Protective Order entered by the Commission Staff, AT&T has redacted all confidential, highly confidential and third party highly confidential information from the **Public Version**, which it is filing by hand and ECFS.

AT&T is also filing by hand with the Secretary's office hard copies of the **Confidential, Highly Confidential** and **Third Party Highly Confidential Versions** of the submission. AT&T is also separately filing by hand the **Confidential, Highly Confidential** and **Third Party Highly Confidential Versions** of this submission. In addition, copies of all versions of the submission are being served electronically on INS's counsel. Electronic courtesy copies are also being provided to the Commission's Enforcement Bureau.

Please contact me if you have any questions regarding this matter.

SIDLEY AUSTIN LLP
SIDLEY

Sincerely,

Michael J. Hunseder

Enclosures

cc: James U. Troup, Counsel for Defendant
Tony Lee, Counsel for Defendant
Lisa Griffin, FCC
Anthony DeLaurentis, FCC
Christopher Killion, FCC

PUBLIC VERSION

FCC 485
November
2014

Federal Communications Commission
Washington, D.C. 20554

OMB Control Number
3060-0411

SECTION 208 FORMAL COMPLAINT INTAKE FORM

1. Case Name: In the Matter of AT&T Corp. v. Iowa Network Services, Inc., Proceeding Number 17-56 (File No. EB-17-MD-001)

2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable):
AT&T Corp., One AT&T Way, Bedminster, NJ 07921; (202) 457-3090 (phone)

3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable):
Iowa Network Services, Inc. d/b/a Aureon Network Services, 7760 Office Plaza Drive South, West Des Moines, IA 50266; (515) 830-0110 (phone)

4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended:
Sections 201(b) and 203(a), (c)

Answer (Y)es, (N)o or N/A to the following:

Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.

Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.

Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:

Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.

Y b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.

Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).

Y d. Complaint contains a certification that complies with 47 C.F.R Section 1.72l(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.

Y e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:
INS filed an action in U.S. District Court for the District of N.J. on May 30, 2014

N f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:

Y g. Complaint includes an information designation that contains:

N/A (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and

Y (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and

Y (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations. and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.

Y i. Certificate of service is attached and conforms to the specifications prescribed by 47 C.F.R. Sections 1.47(g) and 1.735(f).

Y j. Verification of payment of filing fee in accordance with 47 C.F.R. Sections 1.721(13) and 1.1106 is attached.

N/A 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.

Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).

Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47(e) and 47 C.F.R. Section 1.735(c).

Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).

Y 12. The correct number of copies required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.

Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).

N/A 14. If Complaint is by multiple complainants, it complies with the requirements of 47 C.F.R. Section 1.723(a).

Y 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).

N/A 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).

Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.

PUBLIC VERSION

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In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(303) 299-5708** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

FORMAL COMPLAINT OF AT&T CORP.

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Dated: June 8, 2017

Counsel for AT&T Corp.

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PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(202) 457-3090** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

FORMAL COMPLAINT OF AT&T CORP.

1. Pursuant to Sections 201, 203, 206, and 208 of the Communications Act ("Act"), 47 U.S.C. §§ 201, 203, 206, 208, and Sections 1.720 *et seq*. of the rules of the Federal Communications Commission ("Commission"), 47 C.F.R. §§ 1.720 *et seq*., and in accordance with the Commission's September 27, 2016 Letter Ruling,[1] Complainant AT&T Corp. ("AT&T") hereby brings this Formal Complaint against Defendant Iowa Network Services, Inc. d/b/a Aureon Network Services ("INS") alleging violations of Sections 201(b) and 203 of the Communications Act (the "Act"), and states in support as follows:

[1] Ex. 1, Letter from Lisa B. Griffin (Commission) to James F. Bendernagel and Michael J. Hunseder (Counsel for AT&T) and James U. Troup and Tony S. Lee (Counsel for INS) (dated September 27, 2016) ("September 27 Letter Ruling").

SUMMARY

2. This dispute concerns tens of millions of dollars in access charges that INS has unlawfully billed in violation of its tariff and of Sections 201(b) and 203 of the Act. 47 U.S.C. §§ 201(b), 203. The vast majority of the disputed charges relate to traffic that INS transports to Iowa carriers engaged in access stimulation.[2] However, INS is not billing AT&T pursuant to a tariff that applies to access stimulation traffic or that contains rates that the Commission has determined are reasonable and appropriate for such traffic.[3] Rather, INS has improperly charged AT&T for a service – Centralized Equal Access ("CEA") service – that was never designed or approved for use in connection with access stimulation traffic and that results in transport charges that are inefficient and not cost effective. *See infra* Section II.A.

3. INS's unlawful access charges are part of a series of unreasonable practices by INS that have deprived AT&T and other long distance carriers of the ability to use other less costly alternatives for transporting traffic, thereby harming consumers. *See infra* Sections II–V; *Connect America Order*, ¶ 663. INS's other unreasonable practices and misconduct include: (i) INS's improper collusion with competitive local exchange carriers ("CLECs") engaged in access stimulation (*infra* Sections II.B & IV.B); (ii) INS's failure to lower its rates in compliance with the Commission's rate cap and rate parity rules (*infra* Section III); (iii) INS's refusal to abide by the Commission's access stimulation rules (*infra* Section IV); and (iv) INS's manipulation of its rates by the inclusion of inappropriate costs in its revenue requirement (*infra* Section V).

4. Because of INS's unlawful conduct, the Commission should find that INS had no right to bill or to collect from AT&T the unpaid charges at issue in this proceeding, and that

[2] Declaration of John W. Habiak ("Habiak Decl.") ¶¶ 4, 47.

[3] *In re Connect Am. Fund*, 26 FCC Rcd. 17663, ¶¶ 648–701 (2011) ("*Connect America Order*"), *petitions for review denied sub nom.*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

AT&T is entitled to refunds of the amounts it paid INS but that INS unlawfully billed. *See infra* Counts I and II. The fact that INS claims that these charges were billed pursuant to a tariff that was permitted to go into effect on 15 days' notice did not confer on INS a license to violate the law, or to charge for services outside the scope of its tariff.[4] *See* AT&T Legal Analysis, Part II.B. Rather, tariffs must be applicable to the services provided and also must conform to the Act and the Commission's rules. *See id*. INS, however, did not revise its CEA tariff to encompass access stimulation traffic, nor did it abide by the Commission's access stimulation rules, even though at least **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** percent of INS's access traffic consists of access stimulation traffic.[5]

INTRODUCTION

5. INS has sought to bill AT&T access charges under an access tariff that, on its face, applies only to "Centralized Equal Access Service." Ex. 3, INAD Tariff F.C.C. No. 1 (filed Aug. 10, 1988). This CEA tariff was initially filed nearly 30 years ago, not long after the Commission authorized the formation of INS to provide CEA service. *See infra* Section I.A. The nature and scope of CEA service is spelled out in a series of Commission decisions, which make clear that CEA service was approved for the limited purpose of facilitating the roll-out of equal access service (*i.e.*, 1+ dialing for presubscribed, long distance service) for very low volumes of originating traffic handled by numerous small, rural local exchange carriers ("LECs"). *See infra* Sections I.A & II.A.1; AT&T Legal Analysis, Part I.A.

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[4] Along with this Complaint, AT&T is submitting a Legal Analysis that sets forth in more detail the legal arguments in support of the Complaint. *See* Legal Analysis in Support of Formal Complaint of AT&T Corp., File No. EB-17-MD-001 (June 5, 2017) ("AT&T Legal Analysis").

[5] *See* Ex. 2, INS Worksheet (Aureon_02696–02708), at Aureon_02697-98 (showing for 2016–17 that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

6. Despite the limited purposes of CEA service, INS has over time expanded its business, not only offering numerous competitive services but also substantially changing the nature of the access traffic it transports. *See infra* Section I.B. Starting in about 2005, INS entered into a series of agreements with CLECs engaged in access stimulation, pursuant to which INS would transport access stimulation traffic to these CLECs. *See infra* Part I.D. Because of INS's agreements, INS's access traffic and revenues skyrocketed. *See infra* Sections I.B. & I.D. Indeed, today, INS is one of the nation's largest traffic pumpers: as a result of its involvement in access stimulation, INS's traffic volumes for interstate access services increased from 831 million minutes in 2003 to over 3.8 *billion* minutes in 2011, and its annual revenues from its interstate tariffed access services grew from approximately $8.7 million in 2003 to $31.4 million in 2011. *See infra* Section I.B.

7. Even though INS is transporting very large volumes of access stimulation traffic (over **[[BEGIN HIGHLY CONFIDENTIAL]]** ■ **[[END HIGHLY CONFIDENTIAL]]** percent of its total switched access traffic), until very recently, INS had not filed a new tariff that applies to access stimulation traffic, nor has it ever properly conformed its CEA tariff to encompass access stimulation traffic. *See infra* Section I.E. Rather, INS has continued to charge AT&T and other long distance carriers pursuant to INS's original CEA tariff, and INS's current tariffed rate for its CEA service is nearly 0.9 cents per minute. Ex. 3, INAD Tariff F.C.C. No. 1, at 145; *see infra* Section II.

8. Because INS has improperly charged its CEA rate on the huge volumes of access stimulation traffic it transports, INS is billing unreasonable and inflated access charges to AT&T and other long distance carriers, which results in massive subsidies, borne implicitly by all consumers of long distance services. *See infra* Section II; *Connect America Order* ¶ 663. AT&T is currently billed for terminating switched access charges by approximately 1,300 LECs, yet one

carrier – INS – is responsible for over 12 percent of AT&T's *total*, nationwide terminating switched access expense. Habiak Decl. ¶ 54. The only rational explanation for INS's wildly disproportionate access charges is that INS has violated the law, primarily by improperly applying its CEA rates to access stimulation traffic.

9. As explained in more detail below, and in AT&T's Legal Analysis, INS's conduct is unlawful and unreasonable in several respects.

10. ***First***, INS is violating Sections 201(b) and 203 by billing its CEA rate under its CEA tariff on access stimulation traffic. INS's CEA tariff applies only to its provision of CEA service, and because CEA service has always been understood to be a limited service, INS can only bill CEA rates under that tariff for traffic that is, in fact, the type of traffic for which CEA service was initially designed and approved. *See* 47 U.S.C § 203; AT&T Legal Analysis, Part I.A. CEA service was not designed for, nor should it be used in connection with, access stimulation traffic. *See infra* Sections I.A & II.A.

11. Access stimulation traffic and the CLECs that participate in such schemes have virtually nothing in common with either the type of traffic for which CEA service was initially approved, or the small, rural LECs for which CEA service was designed. *See infra* Section II.A.1; AT&T Legal Analysis, Part I.A.2. The Free Calling Parties ("FCPs") with which the access stimulating CLECs have partnered have no need for equal access services because substantially all of their traffic is terminating traffic, not originating traffic. *See id.*; *see also* Habiak Decl. ¶¶ 12, 19. And, as the Commission knows, access stimulation traffic generally involves massive call volumes going to a limited number of FCPs in a small number of locations, *Connect America Order* ¶ 656, and bears no resemblance, in terms of volume, expense, or purpose to legitimate CEA traffic, which consists of small call volumes routed to or from numerous, widely-dispersed, small, rural LECs. *See infra* Section II.2; AT&T Legal Analysis, Part I.A.2.

12. Because of these stark differences, access stimulation traffic is simply not encompassed within the service that INS has tariffed or that the Commission authorized when it approved INS's application to provide CEA service in 1988. *See* AT&T Legal Analysis, Part I. Because INS's CEA tariff does not encompass the service that INS provided in routing access stimulation traffic to CLECs, INS (i) has violated its tariff, as well as Sections 201(b) and 203 of the Act, and (ii) may not lawfully collect the tariffed CEA charges it has billed to AT&T on access stimulation traffic. *See infra* Counts I & II; AT&T Legal Analysis, Part I.A.

13. INS's billing of CEA rates for such traffic also violates Section 201(b) of the Act because it is at odds with a fundamental purpose of CEA service. AT&T Legal Analysis, Part I.B. As the Commission made clear in its *Alpine* decision, CEA service was intended "to *lower* the cost of transporting traffic from Des Moines to the various remote rural exchanges."[6] INS's provision of CEA service in connection with access stimulation traffic, by contrast, substantially raises the costs of transport and is thus unreasonable. *See infra* Section II.B. There are a number of other transport alternatives that are more efficient, and that (absent INS's misconduct) would be significantly less costly. *See id.* Those alternatives, however, have not been available to AT&T and other IXCs at competitive, market-based prices because of INS's insistence that all IXC long distance traffic must be routed over its network. *Id.* In fact, if long distance carriers were able to transport their traffic at the rates for direct trunked transport found in the tariff of Qwest Corporation d/b/a CenturyLink QC ("CenturyLink"), *cf. Connect America Order* ¶ 689, the costs would be about **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** lower than the costs of using INS's CEA service. *See infra* Section II.B. There is simply no basis for INS's position that IXCs must use INS's CEA service, and pay unreasonably inflated rates, to route access stimulation traffic to CLECs. INS's inclusion of a provision in its traffic

[6] *AT&T Corp. v. Alpine Commc'ns, LLC*, 27 FCC Rcd. 11511, ¶ 29 (2012) ("*Alpine*").

agreements with access stimulating CLECs **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** is also anticompetitive. *See infra* Section II.B; AT&T Legal Analysis, Parts I.B and I.C.4.

14. ***Second***, even for the small fraction of INS's traffic that is not associated with access stimulation and that INS would be authorized to bill under a valid CEA tariff, INS has improperly charged AT&T by failing to conform its CEA tariff to the Commission's rate cap and rate parity rules. *See infra* Section III; AT&T Legal Analysis, Part II. In 2013, following issuance of those rules, INS raised its CEA rates, in flat violation of the Commission's rate cap rule. *See infra* Section I.E. Further, INS has never conformed its intrastate CEA rates to match its capped interstate rates, thereby violating the Commission's rate parity rules. *Id.* Because INS's CEA tariff violates the Commission's rules and was not lawfully filed due to the above-cap rates, it is void *ab initio*, and INS's defenses to its rule violations are meritless. *See infra* Section III; AT&T Legal Analysis, Part II; *see also* 47 C.F.R. § 51.905(b) (LECs "are required to tariff rates" no higher than the Commission's rules).

15. ***Third***, even assuming, *arguendo*, that INS could properly bill access stimulation traffic under its CEA tariff, INS's CEA tariff is still unlawful because INS has failed to abide by the Commission's rules that were specifically designed to curb access stimulation. *See infra* Section IV. INS is engaged in "access stimulation" because it carries at least 11 times more terminating traffic than originating traffic, and it has entered into revenue sharing agreements. 47 C.F.R. § 61.3(bbb); *see* AT&T Legal Analysis, Part III. In fact, INS's initial decision to transport such traffic in or around 2005 was a substantial cause of the dramatic growth of access stimulation in Iowa, as well as the attendant harms associated with that practice; further, INS's decision to continue to impose unlawful access charges on this traffic has allowed access stimulation to continue to flourish, in spite of the Commission's determination that this scheme harms

consumers and should be curtailed.[7]

16. ***Fourth***, and in all events, INS has manipulated its tariffed CEA rates by, among other things, inflating its rate requirement with excessive network costs and inappropriate "Uncollectible Revenues." *See infra* Section V; AT&T Legal Analysis, Part IV; Rhinehart Decl. As such, in addition to the retroactive relief sought by AT&T, the Commission should conduct a detailed review of INS's CEA rates in order to determine (i) a reasonable rate on a going forward basis, and (ii) whether INS engaged in "furtive concealment" of violations of the Commission's rules by using improper accounting methods, thus allowing access customers to pursue refunds. AT&T Legal Analysis, Part IV; *see also ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 413 (D.C. Cir. 2002) ("*ACS*").

17. Based on the foregoing, as well as the additional information set forth below, AT&T requests that the Commission find: (i) INS's conduct and tariffs violate Sections 201(b) and 203(c) of the Act; (ii) INS may not charge CEA rates in connection with access stimulation traffic; (iii) as a result of its unlawful conduct, INS is not entitled to payment on the claims it asserted in the District Court litigation; and (iv) AT&T is entitled, at a minimum, to prospective relief and refunds, in an amount to be determined in a subsequent damages proceeding. *See infra* Counts I & II.

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[7] *See Connect America Order* ¶¶ 648, 663; *see also* Ex. 4, Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c), *In re Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges*, WC Docket No. 16-363 (filed Sept. 30, 2016) ("AT&T's Forbearance Pet.") (the public interest requires forbearance from transport charges on access stimulation schemes that help perpetuate the practice). Moreover, even if INS were somehow outside the broad confines of the Commission's access stimulation rules, INS's conduct would be unreasonable under Section 201(b) for a separate reason. If the access stimulating CLECs were directly providing the transport that INS has billed, there is no question that such transport would be subject to the pricing constraints in the Commission's access stimulation rules. It is thus unreasonable for INS to carry that same traffic at its high CEA rates, particularly because, as explained below, INS's CEA rates act as a price umbrella that has allowed alternatives to INS's service to be priced at unreasonable levels. *See* AT&T Legal Analysis, Part III.C.

18. The remainder of this Complaint is organized as follows: (i) a statement of the Commission's jurisdiction; (ii) a description of the supporting materials; (iii) the Certifications required by the Commission's rules; (iv) a description of the parties and relevant non-parties; (v) a description of the relevant factual and regulatory background; (vi) descriptions of INS's wrongful conduct; (vii) two Counts setting forth INS's violations of Sections 201(b) and 203 of the Act, respectively; and (viii) AT&T's Prayer for Relief.

JURISDICTION

19. The Commission has jurisdiction over this Complaint under Section 208 of the Act, 47 U.S.C. § 208, and pursuant to the *Referral Order*.[8] INS is a common carrier, 47 U.S.C. § 153, subject to Title II of the Act, including Sections 201, 203, 206, and 208.[9]

20. AT&T requests damages for INS's unlawful and unreasonable conduct, including but not limited to overcharges, for amounts AT&T paid in excess of the lawful rate, and consequential damages. However, pursuant to the Commission's Rules (47 C.F.R. § 1.722(d)), AT&T requests that the Commission first determine the issues in this Complaint relating to liability and then decide AT&T's damages in a separate and subsequent proceeding.

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[8] *See* Ex. 5, Mem. Order, *Iowa Network Servs., Inc. v. AT&T Corp.*, No. 14-cv-03439 (PGS), 2015 WL 5996301, at *7–8 (D.N.J. Oct. 14, 2015) ("*Referral Order*"), *reh'g denied, request for interlocutory appeal denied*, (D.N.J. Dec. 7, 2015). The District Court did not dismiss INS's collection action claims, but retained jurisdiction of the case in order to resolve those claims after the referral proceedings are concluded. Even though the District Court retained jurisdiction, and denied INS's request for interlocutory appeal, INS appealed the *Referral Order* to the Court of Appeals. INS's appeal was dismissed for lack of jurisdiction. Ex. 6, Order, *Iowa Network Servs., Inc. v. AT&T Corp.*, No. 15-4093 (3d Cir. Aug. 4, 2016) (Dkt. No. 51 in case 14-cv-3439).

[9] *See* Ex. 7, Form 499 Filer Database, Detailed Information for INS, http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829226. ("INS Form 499" stating that INS is a local exchange carrier ("LEC"), which is a type of common carrier, and that it provides telecommunications services in Iowa).

STATEMENT REGARDING SUPPORTING MATERIAL

21. As part of this Complaint, AT&T provides a complete statement of facts establishing that INS has violated the Communications Act and the Commission's rules implementing the Act.[10] In addition, AT&T attaches as exhibits copies of the documents and data compilations upon which it relies in support of this Complaint.[11] Along with its Complaint, AT&T also submits: (i) a Legal Analysis that explains why INS has violated the Act and the Commission's implementing rules; (ii) supporting declarations by John W. Habiak and Daniel P. Rhinehart; (iii) an information designation; (iv) proposed findings of fact and conclusions of law; (v) interrogatory requests; and (vi) other forms and certifications required by the Commission's rules, 47 C.F.R. §1.721(a).[12]

22. AT&T's filing includes a public version, a confidential version, a highly confidential version and a third party highly confidential version of the Complaint. The Complaint and supporting materials contain certain information and documents that have been designated as confidential or highly confidential in proceedings before the District Court, in other proceedings or in connection with the informal discovery that preceded, at the Commission's recommendation, the filing of this Complaint. The public version is a redacted version of these materials. The confidential, highly confidential and third party highly confidential versions are being filed under seal on an unredacted basis pursuant to the Protective Order entered by the Commission on February 24, 2017.

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[10] *See infra* Section I.

[11] *See* Exs. 1–82.

[12] In accordance with the Staff's Order dated May 18, 2017, AT&T is not submitting a document log describing all documents, data compilations and other tangible things relevant to the facts alleged in this Complaint.

REQUIRED CERTIFICATIONS

23. Pursuant to the Commission's rules (47 C.F.R. § 1.721(a)(8)), AT&T hereby certifies that it has attempted in good faith to discuss the possibility of settlement with INS prior to filing this Formal Complaint. *See* Letter from Brian A. McAleenan (Counsel for AT&T) to James U. Troup and Tony S. Lee (Counsel for INS) (dated May 17, 2017). At various points in time, AT&T and INS have discussed settlement but at present, the parties remain far apart. While Counsel for INS indicated to Commission Staff that INS was willing to engage in mediation, it is AT&T's view (also communicated to Staff) that any such discussions are premature, particularly in light of the distance between the parties' previous offers.

24. Pursuant to the Commission's rules regarding separate actions (47 C.F.R. § 1.721(a)(9)), AT&T states that INS filed a collection action in the U.S. District Court on May 30, 2014, and that AT&T's Complaint originates from the *Referral Order* in that action. Accordingly, the Complaint is based on many of the same facts underlying the District Court action. Two other proceedings pending before the Commission address matters that could relate, in part, to some of the same matters at issue in this proceeding: (1) AT&T's Formal Complaint against Great Lakes Communications Corp. ("Great Lakes"), filed on August 16, 2016;[13] and (2) Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c), filed on September 30, 2016.[14]

[13] *See* Ex. 8, Formal Complaint of AT&T Corp., *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-16-MD-001 (filed August 16, 2016) ("AT&T GLCC Complaint").

[14] *See* Ex. 4, AT&T Forbearance Pet.

THE PARTIES

25. Complainant AT&T is a New York corporation that provides communications and other services, with its principal place of business in Bedminster, New Jersey.[15] This Complaint relates to AT&T's role as a purchaser of services, and not as a common carrier providing services.

26. Defendant INS is an Iowa corporation with its principal place of business in West Des Moines, Iowa.[16] For purposes of this Complaint, INS is operating as a common carrier, and specifically as a LEC, that is subject to the Act. AT&T provides further details about INS's operations in the Background section of this Complaint. *See infra* Section I.B.

RELEVANT NON-PARTIES

27. In addition to the above-named parties, the following non-parties are involved in the facts underlying this Complaint.

28. There are several CLECs operating in Iowa that are engaged in access stimulation, as defined by the Commission's rules (*see* 47 C.F.R. § 61.3(bbb)), and that connect to long distance carriers through INS. The Iowa CLEC with the largest volumes of access stimulation traffic is Great Lakes, an Iowa corporation with its principal places of business in Spencer, Iowa.[17] Other Iowa traffic pumping CLECs include, but are not necessarily limited to: Omnitel Communications; BTC, Inc.; Louisa Communications; Premier Communications; Goldfield Access Network, LLC; and Interstate Cablevision. *See* Habiak Decl. ¶ 15.[18]

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[15] *See* Ex. 9, Form 499 Filer Database, Detailed Information for AT&T, http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=806172 ("AT&T Form 499").

[16] *See* Ex. 7, INS Form 499.

[17] *See, e.g.*, Ex. 8, AT&T GLCC Complaint ¶ 16.

[18] Another LEC that appears to have become involved in access stimulation is Reasnor Telephone Company. Habiak Decl. ¶ 15, n.2.

29. Other relevant parties include third party transport providers, which offer services IXCs can use to transport traffic between their networks and the networks of access stimulating CLECs like those identified in the prior paragraph.

FACTS IN SUPPORT OF COMPLAINT

I. BACKGROUND

30. By way of background, AT&T offers a brief review of the following: (A) the establishment and purpose of CEA service in Iowa and elsewhere; (B) the expansion of INS's business and services; (C) the nature and growth of access stimulation; (D) the central role of INS in the provision of access stimulation in Iowa; (E) INS's violation of the rules adopted by the Commission in its *Connect America Order*; and (F) the parties' dealings and the ensuing District Court litigation.

A. The Establishment and Purpose of Centralized Equal Access Service

31. CEA service was developed in the mid-1980s to facilitate the roll-out of equal access service following AT&T's divestiture of the Bell Operating Companies ("BOCs") in January 1984.[19] A critical feature of equal access service is "1+" dialing on originating calls, a feature that automatically directs all long distance numbers to the customer's chosen (or "presubscribed") long distance carrier. Habiak Decl. ¶ 19. As such, equal access concerns the ability to place calls, not receive them, and therefore "equal access, by its very nature, is an originating service."[20]

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[19] Equal access service refers to "a class of service whereby all long distance service providers receive equivalent connections to the local exchange carrier's network." Ex. 10, FCC, *Distribution of Equal Access Lines and Presubscribed Lines*, 1997 WL 677407 (C.C.B. Nov. 3, 1997), https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/eqacc-97.pdf ("*Equal Access Report*"); *see also* Mem. Op. & Order, *Investigation into the Quality of Equal Access Services TDX Rulemaking*, 1986 WL 291752, at *3 (F.C.C. May 23, 1986) (noting that the equal access concept originated in the advent of long distance competition pursuant to the Modification of Final Judgment ("MFJ")).

[20] *In re the Application of SDCEA, Inc.*, 5 FCC Rcd. 6978, ¶ 17 (1990) ("*SDCEA Order*").

32. In certain rural areas, the challenge of providing equal access was twofold.[21] *First*, in the 1980s, many switches of small rural incumbent LECs did not have the capability of providing service to more than one long distance carrier on a 1+ basis, and most small rural LECs faced material financial hurdles in either upgrading or replacing their existing switches to provide that capability. Ex. 10, *Equal Access Report*, at 2–3; Habiak Decl. ¶ 17.[22] *Second*, at least in some states where there were numerous independent rural LECs, it was believed that many new IXCs would not construct the facilities necessary to interconnect their long distance networks directly to all of the end office switches of the many rural incumbent LECs; the cost of constructing such facilities was believed to be high, whereas the volume of potential traffic from each individual LEC was very small. *INS Order* ¶ 3.

33. In an effort to overcome these problems, reduce costs, and thereby facilitate competition for originating long distance service in rural areas, small rural LECs in some states proposed to form entities that would provide "CEA service," which was designed to achieve two main objectives. *First*, the equal access function was "centralized" at a tandem switch, thereby sparing the small, independent LECs the direct costs of converting their switches to equal access.[23] *Second*, CEA service typically entailed the construction of a fiber network that aggregated traffic

[21] The Commission initially required only the former Bell Operating Companies ("BOCs") to convert to equal access. Ex. 10, *Equal Access Report*, at 2–3. But by the end of 1985, the Commission had further "ordered most smaller telephone companies to provide equal access, although certain smaller companies without computerized switches were exempt from this requirement." *Id.* at 3.

[22] *In re Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶ 3 (C.C.B. 1988) ("*INS Order*").

[23] *In re Application of Ind. Switch Access Div.*, File No. W-P-C-5671, 1986 WL 291436, ¶¶ 2, 23 (F.C.C. Apr. 10, 1986) ("*Indiana Switch CCB Order*"); *see also* Ex. 11, Deposition of Mark Shlanta, CEO of South Dakota Network LLC ("SDN"), *Northern Valley Commc'ns, LLC, v. AT&T Corp.*, No. 14-1018, at 17:18-18:9 (D.S.D. June 3-4, 2015) ("Shlanta Dep.") **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]**

from small incumbent LECs and routed it to the centralized access tandem switch, thereby providing a more efficient means of transporting low volumes of traffic between each IXC and each of the many small, incumbent rural LECs.[24]

34. The provision of CEA service via a separate entity created and owned by a group of independent incumbent LECs was authorized by the Commission in four states: Indiana, Iowa, South Dakota and Minnesota.[25] INS's application to provide CEA service in Iowa was approved in February 1988. *INS Order* ¶¶ 3, 38–40. In discussing that application, the Commission specifically noted that an important reason for the service was that competing IXCs "would find it an expensive task to provide their own facilities to each of these small exchanges, *given the relatively low amount of toll traffic they generate*." *Id.* (emphasis added).

35. In its orders authorizing CEA service, the Commission made clear that CEA service, once implemented, should be provided in a cost effective manner that would reduce costs to IXCs and their customers.[26] As the Commission succinctly stated in its *Alpine* decision, CEA service was intended "to *lower* the cost of transporting traffic from [INS's tandem] to the various remote rural exchanges." *Alpine* ¶ 29 (emphasis added). The Commission also indicated that its authorization of CEA service was not intended to provide CEA providers with unilateral authority

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[24] *INS Order* ¶ 3; *see also* Ex. 11, Shlanta Dep. at 17:18–18:9 **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]**

[25] *See Indiana Switch CCB Order* ¶¶ 2, 23; *In re the Application of Ind. Switch Access Div.*, 1 FCC Rcd. 634, ¶ 5 (1986) ("*Indiana Switch Review Order*") (collectively, the "*Indiana Switch Orders*"); *INS Order* ¶ 3; *SDCEA Order* ¶¶ 24–25; Ex. 12, Memorandum Opinion, Order and Certificate, *In re the Application of Minn. Indep. Equal Access Corp.,* File No. W-P-C-6400, ¶¶ 15–16 (F.C.C. rel. Aug. 22, 1990) ("*MIEAC Order*").

[26] *See e.g.*, *INS Order* ¶ 3; *Indiana Switch CCB Order* ¶ 23 (finding that "the benefits of proposals which will *efficiently* render desirable access service to the public") (emphasis added)).

to expand their services; CEA providers would have to show that the expected benefits would exceed the costs:

> If in some future case an IXC demonstrates that a [CEA] proposal significantly increases IXCs' operating costs without significant increases in service choices or benefits to subscribers, or unreasonably designates [LEC] points of interconnection with IXCs, we may reach a different result. In other words, our decision permitting [the CEA arrangement] to proceed should not be interpreted as unbounded authority on the part of [LECs], or their affiliates, to determine points of interconnection with IXCs.[27]

36. In addition, while certain CEA proposals have encompassed both originating and terminating traffic, the inclusion of terminating traffic in a CEA arrangement is not an essential element of CEA service.[28] In the *MIEAC Order*, for example, the Commission approved a CEA arrangement that "provide[d] interstate and intrastate terminating access on a *voluntary, competitive basis*," pursuant to which "IXCs [would] have the *option* to use [the CEA provider's] terminating tandem services, U.S. West's terminating services, Feature Group A and B arrangements, and/or their own trunks to complete calls to customers of the participating ILECs."[29] In approving this arrangement, the Commission noted that "by eliminating mandatory routing through [its central tandem in] Minneapolis," MIEAC "has demonstrated its willingness to incorporate sufficient flexibility into its network to warrant increased efficiency and reduce[d] costs to customers." *Id.* ¶ 14. The *MIEAC Order* thus confirms that termination of long distance traffic is not a necessary component of CEA service, and reflects a recognition that allowing IXCs

[27] *Indiana Switch Review Order* ¶ 5; *see also Alpine* ¶¶ 45, 47.

[28] In ordering use of INS's network for both originating and terminating traffic, the Commission specifically took note of INS's assumption that "the majority of the network's costs would be recovered from intraLATA toll calls" and cautioned that, if that assumption changed, the Commission would need to review INS's proposal. *INS Order* ¶¶ 32–33.

[29] *MIEAC Order* ¶ 12 (emphasis added) (noting MIEAC "will charge IXCs only for those minutes of use which they choose to terminate over the proposed system").

to use all available options to terminate their traffic enhances the overall efficiency of long distance service.

B. The Expansion of INS's Business and Services.

37. INS is owned by the rural LECs (also referenced as Independent Telephone Companies or "ITCs") that founded it.[30] At the outset, INS had about 136 participating LECs, and provided only CEA service (through its Access Division) and long distance services (through its Iowa Network Interexchange Carrier Division ("Carrier Division" or "INICD")).[31] INS's initial network consisted of a tandem switch in Des Moines, and a fiber ring that included 16 points of interconnection ("POIs") (15 located throughout Iowa plus one in Nebraska).[32]

38. Since its founding in 1988, INS's business has expanded well beyond CEA service. Indeed, in 2016 INS changed its name to "Aureon" to reflect the growing diversity of its business.[33] Today, INS (as Aureon) provides an array of services on a competitive basis: (a) voice services (VoIP, IP Fax, hosted PBX); (b) dedicated Internet access; (c) cloud and data storage; (d) IT support (technology planning, help desk, disaster recovery, IT security); (e) human resources (administrative services, staffing, leadership development, senior living services); and (f) call centers.[34]

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[30] *In re Iowa Network Access Div. Tariff F.C.C. No. 1*, 4 FCC Rcd. 3947, ¶ 1 (C.C.B. 1989). INS's application to provide CEA service was submitted in the name of its Iowa Network Access Division ("Access Division" or "INAD").

[31] *Id.*

[32] *Id.* ¶ 2. From the start, INS has charged IXCs a flat, per-minute rate for each call. *See Alpine* ¶¶ 9, 10. INS's per-minute rate does not vary based on the distance that INS transports the call. *Id.*

[33] Ex. 13, *Iowa Network Services Rebrands with Plans to Grow*, Des Moines Register (Mar. 29, 2016) ("Iowa Network Article"), http://www.desmoinesregister.com/story/tech/2016/03/29/iowa-network-services-rebrands-plans-grow/82341618.

[34] Ex. 14, Aureon Website, www.aureon.com (last visited May 15, 2017) (see tabs for "Technology," "HR," and "Contact Center"); Ex. 13, Iowa Network Article.

39. Most relevant here is the explosive growth that INS has experienced as a result of its decision to transport and charge its CEA rates for long distance traffic routed to CLECs engaged in access stimulation. In 2004, INS reported that in 2003 it transported approximately 830 million minutes of interstate switched access service per year, and for the test period ending June 30, 2005, it was projecting an increase of 2.32%.[35] Once Iowa carriers began engaging in access stimulation on a large scale, INS's traffic volumes increased dramatically. As INS noted in its 2006 Tariff Filing, interstate access minutes grew at a rate of 5.23% in 2005, which resulted in INS's rate of return increasing to 27.89%.[36] More significantly, for the test period ending June 30, 2007, INS was projecting an increase in interstate access minutes of almost 32%.[37] INS attributed this increase to "a significant increase in toll aggregator traffic which began to appear during the last quarter of 2005."[38]

40. Since 2005, the growth in interstate access minutes and revenue on INS's network has been huge.

[35] *See* Ex. 15, INS Introduction, Overview and Rate Development, July 1, 2004 FCC Annual Access Charge Tariff Filing, at 1 (filed June 24, 2004) ("INS 2004 Tariff Filing").

[36] *See* Ex. 16, INS Introduction, Overview and Rate Development, July 3, 2006 FCC Annual Access Charge Tariff Filing, at 1 (filed June 26, 2006) ("INS 2006 Tariff Filing").

[37] *Id.*

[38] *Id.* at 1–2; *see also id.* at 3 ("[t]he increase in test period projected access minutes results primarily from additional terminating conference call minutes handled by call aggregators").

TABLE 1

	Interstate Access Minutes[39]	Interstate Access Revenues[40]
2005	954,245,936	$9,838,276
2006	1,570,363,583	$14,808,529
2007	1,844,725,157	$15,772,400
2008	2,171,054,422	$18,171,726
2009	2,982,269,940	$24,424,791
2010	3,679,806,752	$30,137,617
2011	3,883,504,867	$31,805,905
2012	3,544,392,104	$25,555,067
2013	2,786,846,408	$21,166,098
2014	2,699,087,868	$24,183,827
2015	2,242,892,301	$20,096,315

Substantially all of this growth has been attributed by INS in its Tariff Filings to increases in "call aggregation," *i.e.*, access stimulation traffic.[41] In addition, the decline in traffic since 2011 appears

[39] The Interstate Access Minutes are sourced from Ex. 16, INS 2006 Tariff Filing; Ex. 17, INS Introduction, Overview and Rate Development, July 1, 2008 FCC Annual Access Charge Filing (filed June 24, 2008) ("INS 2008 Tariff Filing"); Ex. 18, INS Introduction, Overview and Rate Development, July 1, 2010 FCC Annual Access Charge Filing (filed June 16, 2010) ("INS 2010 Tariff Filing"); Ex. 19, INS Introduction, Overview and Rate Development, July 3, 2012 FCC Annual Access Charge Filing (filed June 26, 2012) ("INS 2012 Tariff Filing"); Ex. 20, INS Introduction, Overview and Rate Development, July 2, 2013 FCC Annual Access Charge Filing (filed June 17, 2013) ("INS 2013 Tariff Filing"); Ex. 21, INS Introduction, Overview and Rate Development, July 1, 2014 FCC Annual Access Charge Filing (filed June 16, 2014) ("INS 2014 Tariff Filing"); and Ex. 22, INS Introduction, Overview and Rate Development, July 1, 2016 FCC Annual Access Charge Filing (filed June 16, 2016) ("INS 2016 Tariff Filing").

[40] The Interstate Access Revenues were generated by multiplying INS's Interstate Access Minutes by the applicable INS interstate CEA rate. The applicable rates by year are: $0.01031/min. (2005); $0.00943/min. (2006); $0.00855/min. (2007); $0.00837/min. (2008); $0.00819/min. (2009–11); $0.00721/min. (2012); $0.007595/min. (2013); and $0.00896/min. (2014–2016). The rates for the years 2006, 2008, 2012 and 2013 reflect the fact that the rate changed mid-year.

[41] *See, e.g.*, Ex. 16, INS 2006 Tariff Filing, at 1–2, 3; Ex. 17, INS 2008 Tariff Filing, at 3–4 (for the test period ending June 30, 2009 INS "projects 1.6 billion terminating conference call minutes generated by call aggregators"); Ex. 19, INS 2012 Tariff Filing, at 2 ("[A]ggregator traffic is projected to increase 1.2%"); Ex. 22, INS 2016 Tariff Filing, at 2 ("IXC traffic delivered to LECs providing service to call aggregators is projected to increase 6.53%"); *see also* Ex. 2, INS Worksheet, at Aureon 02698–99 **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

to have been caused in part by significant declines in legitimate CEA traffic.[42]

41. As shown in Table 1, INS's decision to agree to carry extraordinarily large volumes of access stimulation traffic resulted in tremendous growth in revenues for INS – increases from $10 million to $20 million annually. These revenues were, in turn, used by INS to "expand" and "improve" its fiber network.[43] Further, INS has continued to expand its business. For example, in 2004, INS began to provide "direct interconnection[s]" to several wireless carriers which, according to its 2004 Annual Tariff Filing, "remove[d] interstate traffic from the network and replace[d] it with interconnection traffic to be billed in accordance with interconnection

[42] Ex. 17, INS 2008 Tariff Filing, at 3–4 (for the test period ending June 30, 2009, INS's "[o]ther access generating traffic [i.e., non call aggregation traffic] is currently declining"); Ex. 19, INS 2012 Tariff Filing, at 2 ("LEC traffic is projected to decrease approximately 16.7% during [the test period ending June 30, 2013]"); Ex. 20, INS 2013 Tariff Filing, at 2 ("The decrease in interstate traffic for the projected test period results primarily from continued reductions in interstate access minutes by independent local exchange carriers that originate or terminate calls over the INS network"); Ex. 21, INS 2014 Tariff Filing, at 2 ("IXC traffic exchanged with LECs is projected to decrease approximately 10.47% during [the test period ended June 30, 2015]"); Ex. 22, INS 2016 Tariff Filing, at 2 ("IXC traffic exchanged with LECs that do not provide service to call aggregators is projected to decrease approximately 2.90% during [the test period ended June 30, 2017] "); *see also* Ex. 2, INS Worksheet, at Aureon 02698–99 **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[43] *See* Ex. 17, INS 2008 Tariff Filing, at 2 ("During the years 2006 and 2007, [INS] added additional investments of approximately $16 million to upgrade its equal access switching and network capabilities and another $5 million is budgeted for 2008."); Ex. 18, INS 2010 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring new technologies and increased capacity . . . . Approximately $20 million has been expended since 2006 and an additional $4.5 million is planned for 2010."); Ex. 19, INS 2012 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $9.6 million has been expended since 2009 and an additional $11.3 million is planned for 2012"); Ex. 20, INS 2013 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $20.3 million has been expended since 2010 and an additional $22.5 million is planned for 2013.").

agreements." *See* Ex. 15, INS 2004 Tariff Filing, at 2.[44] INS has also offered other network services over its fiber network, including various backhaul services for wireless carriers, as well as the leasing of DS-3 fiber capacity to ILECs and other carriers. *See Alpine* ¶ 12; *see also* Ex. 27, Deposition of Robert Sherlock, *Alpine Communications, LLC, et al. v. AT&T Corp.,* No. 08-01042, at 45–46, 49–50 (taken Feb. 10, 2010) ("Sherlock Dep.").

42. As a result of this expansion, INS currently offers a wide range of competitive network services over a fiber network that INS funded and initially built to provide CEA service. As detailed on its website, those services include:

- **Network Transport** -- "Aureon Technology offers a high-capacity, symmetrical, redundant fiber optic network to support all your communications needs. From Ethernet transport to MPLS technology, we have the broad suite of services you need and the powerful network needed to deliver them."[45]
- **Data Network Services** -- Aureon Technology's data network services include: MPLS, Fiber, SIP Session (Trunking), IP Meshed Wide Area Networks (WAN), T-1 Solutions and Ethernet Over Copper (EoC).[46]
- **Internet Services** -- "We operate three geographically separate IP-network hubs on the Aureon Fiber Optic Network, and connect to multiple Tier 1 backbone providers."[47]
- **Wholesale Voice Services** -- "Our wholesale long-distance, IP long-distance and toll-free services feature 24/7, year-round Network Control Center support, and call detail records in industry-standard EMI format. Aureon Technology also provides

[44] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[45] Ex. 28, Aureon Website, Network Transport, https://aureon.com/network transport (last visited May 15, 2017). The Access Division has filed no tariffs for any of these services, and they presumably are offered via INS's other divisions pursuant to contracts.

[46] Ex. 29, Aureon Website, Data Network Services, https://aureon.com/data-network-services (last visited May 15, 2017).

[47] Ex. 30, Aureon Website, Wholesale Services, https://aureon.com/wholesale services (last visited May 15, 2017).

> competitively priced Hosted Voice-Over IP reseller opportunities, SS7 database services and CALEA compliance."[48]

C. The Nature and Growth of Access Stimulation.

43. The Commission has found access stimulation to be a "wasteful arbitrage scheme[]" with many "adverse effects," including the imposition of "undue costs on consumers," especially the "customers of . . . long-distance providers," who must "bear the[] costs" of providing the free calling services despite not using those services. *See Connect America Order* ¶¶ 648–49, 600, 662–65.

44. Access stimulation generally involves "an arrangement [between a LEC and] a provider of high call volume operations such as chat lines, adult entertainment calls, and 'free' conference calls." *Id.* ¶ 656. The arrangement inflates the number of calls to the LEC, which in turn inflates the access charges billed to long distance and wireless companies. The IXCs and wireless carriers are thus faced with increased access charges and "are forced to recover these costs from all their customers, even though many of those customers do not use the services stimulating the access demand." *Id.*

45. Because access rates are generally higher in rural areas, most access stimulation schemes have occurred in states, like Iowa, that have a large number of rural LECs that charge relatively high rates for switched access service. Habiak Decl. ¶¶ 5–6. To take advantage of those high rates, CLECs engaged in access stimulation have historically located their operations in jurisdictions where they could benchmark their rates to the high rates of rural ILECs. *Id.* ¶ 6. Typically, these CLECs would not compete with those ILECs for local telecommunications business; rather they would partner with FCPs to artificially drive traffic to the FCPs' chat and conferencing equipment, thereby generating high access revenues that were then shared with the

[48] *Id.*

FCPs. *Id.* ¶ 7.

46. The ability of CLECs, like Great Lakes, to engage in access stimulation, and to charge rates that could not be sustained in a competitive market, arises because of flaws that remain in the Commission's access charge rules. *See Connect America Order* ¶ 9 ("byzantine per-minute and geography-based charges" cause "arbitrage and competitive distortions"). For example, the Commission has prohibited IXCs from generally blocking traffic destined for particular CLECs, even if those CLECs were engaged in access stimulation or other abusive practices, or were charging unreasonable rates. *In re Establishing Just & Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd. 11629, ¶¶ 1, 5 (W.C.B. 2007) ("*2007 Blocking Order*"). And, as the Commission concluded in 2001, because of the Commission's rules and other factors, CLECs have "bottleneck monopolies" on calls placed to their customers, and thus have both the power and incentive to charge "excessive" rates via tariff. *In re Access Charge Reform*, 16 FCC Rcd. 9923, ¶¶ 2, 30–34 (2001) ("*CLEC Access Order*").[49]

47. As a consequence, once a CLEC decides to engage in access stimulation and designates how access stimulation traffic is to be routed to its end office switch, the IXCs are billed access charges on that route, regardless of whether that particular route is efficient or cost-effective. Habiak Decl. ¶ 9. Indeed, there are obvious incentives to route the traffic in an

[49] In 2001, the Commission took steps to constrain the ability of CLECs to exploit their bottleneck monopolies by imposing rules on the rates that CLECs could charge for access services. *See CLEC Access Order*, 47 C.F.R. § 61.26. *First*, it capped CLECs' tariff rates by benchmarking them to the rates charged by the ILECs in the areas in which the CLEC operated. *See CLEC Access Order* ¶¶ 40–63. The FCC thus prohibited a CLEC from tariffing a rate higher than the ILEC's rate (*i.e.*, the benchmark rate) so long as it provided "the functional equivalent" of the ILEC's service. 47 C.F.R. § 61.26(a)(3). *Second*, it prohibited CLECs from filing tariffs with rates that were above the benchmark rate (a rule called "mandatory detariffing"), allowing CLECs to exceed the benchmark rate only through negotiated contracts with the IXCs. *See CLEC Access Order* ¶¶ 3, 40. While these reforms generally worked to bring the access rates of many CLECs down to more reasonable levels, they left open an opportunity for CLECs to engage in regulatory gamesmanship – including access stimulation. *See generally Connect America Order* ¶¶ 9, 14, 648.

inefficient way and thereby increase the access revenues available to be shared by the participants in the access stimulation scheme. *Id.* ¶ 10.[50]

48. Given these incentives, CLEC access stimulation schemes grew rapidly, leading to litigation at the Commission and in the courts.[51] Further, as described below, although the Commission took steps in 2011 that were meant to "curtail" access stimulation, *Connect America Order* ¶ 649, the reality is that access stimulation continues to flourish in Iowa (as INS's traffic data shows, *see supra* Table 1) and in other states. *See* Ex. 4, AT&T Forbearance Pet. at 3–4, 9–10, 15.

D. The Central Role of INS in the Provision of Access Stimulation in Iowa.

49. In Iowa, for access stimulation schemes to work when they were first implemented, it was imperative that the access stimulating CLECs enter into agreements with INS to transport their traffic from Des Moines to the local jurisdictions where these CLEC were operating. Habiak Decl. ¶ 11. The reason these CLECs needed INS's terminating transport service was not because they were interested in providing equal access service to local residential and business customers. *Id.* ¶ 12. Rather, access to INS's network was necessary because without it, these CLECs could not engage in access stimulation. At that time, the most attractive way, from the CLECs'

[50] The reason that access stimulation arrangements can be sustained is because CLEC rates, unlike ILEC rates, are not tied to the CLEC's own traffic volumes, but to the ILEC rates against which they are benchmarked. *Connect America Order* ¶¶ 657, 689. Thus, when a CLEC begins generating large volumes of traffic it does not have to lower its rates – it can keep them at the benchmarked ILEC rate, thus securing windfall recoveries that invariably are unjust and unreasonable under Section 201(b) of the Act. *Id.* ¶ 657.

[51] *See, e.g.*, *Sprint Commc'ns Co. L.P.* v. *Crow Creek Sioux Tribal Court*, 121 F. Supp. 3d 905, 912–14 (D.S.D. 2015) (discussing cases).

perspective, to transport the large volumes of access stimulation traffic to the rural exchanges where these CLECs operated was via the INS network. *Id.* ¶ 13.[52]

50. Notwithstanding the fact that CEA service was never designed or approved for use in connection with the transport of access stimulation traffic, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** As noted above, such arrangements resulted in dramatically higher access revenues for INS. *See supra* Table 1.

51. One such agreement was **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

52. In addition to **[[BEGIN CONFIDENTIAL]]** [redacted]

[52] With the growth of the internet, alternative methods of transporting access stimulation traffic have emerged. However, those alternatives were not as widely available when access stimulation was first starting out. *See* Habiak Decl. ¶ 13.

[53] *See* Ex. 31, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[redacted] **[[END CONFIDENTIAL]]**

53. As explained in more detail below (*see infra* Section IV.B), by entering into these agreements, INS has greatly facilitated the growth of access stimulation in Iowa. *See also* AT&T Legal Analysis, Part III. Moreover, INS, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** has improperly colluded with the access stimulating CLECs, depriving AT&T and other long distance carriers of more cost-effective transport alternatives. *See infra* Section II.A.2; AT&T Legal Analysis, Parts I.B, I.C.4 and IV.C.

E. INS's Violation of the Commission's *Connect America Order* Rules.

54. In 2011, the Commission issued its *Connect America Order*, which established a new set of rules designed to identify access stimulation LECs, and to lower their access rates.

[54] *See, e.g.*, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[55] *See id.* § 3(A). **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[56] Ex. 38, Iowa Network Services, Inc. Motion for Partial Summary Denial of AT&T Services, Inc.'s Forbearance Petition, *In re Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges,* WC Docket No. 16-363 (filed Dec. 2, 2016) ("INS Forbearance Opp.").

Connect America Order ¶¶ 648–701; 47 C.F.R. § 61.3(bbb). Under those rules, a LEC is engaged in access stimulation when "(1) [the] LEC has a revenue sharing agreement and (2) the LEC either has (a) a three-to-one ratio of terminating-to-originating traffic in any month or (b) experiences more than a 100 percent increase in traffic volume in any month measured against the same month during the previous year." *Connect America Order* ¶ 33. The Commission's rules further provide that a CLEC engaged in access stimulation generally must file revised tariffs, with lower rates. *See id.* ¶ 679.

55. In the *Connect America Order*, the Commission also put into place a series of rules that were designed to facilitate the transition to a "bill and keep" approach to intercarrier compensation. *Id.* ¶¶ 736–39, 798–808. To that end, it capped "all interstate switched access rates in effect on the effective date of the rules" (which was December 29, 2011), "including originating access and all transport rates." *Id.* ¶ 800.[57] The Commission also addressed intrastate rates, concluding that certain intrastate rates would be capped, and that intrastate terminating rates would be reduced to parity with interstate access rates. *Id.* ¶ 801.

56. Following adoption of the rules in the *Connect America Order*, INS did not amend its rates, as required by the *Connect America Order*, to reflect the fact that INS was engaged in

[57] The Commission took this step because, without it, "rate-of-return carriers could shift costs between or among other rate elements and rates to interconnecting carriers could continue to increase as they have been in the past years, which is counter to the reform we adopt today." *Connect America Order* ¶ 800.

access stimulation. Habiak Decl. ¶¶ 40–42. Indeed, INS has taken the position that it is not subject to those rules, even though the vast majority of its traffic is access stimulation traffic.[58]

57. Further, INS did not cap its interstate rates, as required by the Commission rate cap rules. Rather, in 2013, it filed tariff revisions that raised its rate for CEA service above the level that existed as of December 29, 2011. Specifically, at the end of 2011, INS's interstate rate for its CEA service was $0.00819 per minute.[59] Effective July 2012, INS reduced that CEA rate to $0.00623 per minute.[60] However, a year later, effective July 2013, INS revised its tariff and raised its CEA rate to its current level of $0.00896 per minute.[61]

58. Finally, INS did not comply with the Commission's rate parity rules. Under those rules, INS was required, over a two year period, to reduce its intrastate rates to be at parity with its capped interstate rates. *Connect America Order* ¶¶ 35, 804 & Figure 9. As noted above, INS's rate for its interstate CEA switched access service is capped at $0.00819 per minute. INS intrastate access service rate for CEA service, by contrast, remains well above that level. *See* Habiak Decl. ¶¶ 38–39 (noting that INS's intrastate CEA rate has been and remains at $0.0114 per minute (not including transport)).

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[58] *See* Ex. 39, Plaintiff's Brief in Support of its Motion to Dismiss Counterclaims Under Rule 12(B)(6), *Iowa Network Services v. AT&T Corp.*, No. 14-3439, at 34 (D.N.J. Aug. 22, 2014) ("INS Motion to Dismiss"); Ex. 40, Plaintiff's Brief in Support of its Motion for Summary Judgment on Tariff Claims, *Iowa Network Services v. AT&T Corp.*, No. 14-3439, at 10–11 (D.N.J. May 6, 2015) ("INS Motion for Summary Judgment"); *see also* Ex. 2, INS Worksheet, at Aureon 02697–98 **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[59] Ex. 41, INAD Tariff F.C.C. No. 1, 10th Revised Page 145 (issued June 24, 2008); *see also* Ex. 18, INS 2010 Tariff Filing, at 2 (INS "proposes to maintain its existing switched transport rate of $0.00819 per minute of use").

[60] Ex. 42, INAD Tariff F.C.C. No. 1, 11th Revised Page 145 (issued June 26, 2012).

[61] Ex. 43, INAD Tariff F.C.C. No. 1, 12th Revised Page 145 (issued June 17, 2013); *see also* Ex. 22, INS 2016 Tariff Filing, at 4 (INS "proposes to maintain its existing switched transport rate of $0.00896 per minute of use").

F. The Parties' Dealings and the Ensuing District Court Litigation.

59. After INS filed tariffs with rates that exceeded the caps adopted in the *Connect America Order*, AT&T disputed INS's billed access services charges, pursuant to the billing dispute provisions in INS's tariff. Habiak Decl. ¶¶ 43–47.[62] In addition, beginning with INS's invoices dated September 2013 (covering traffic from August 2013, which is the month after INS's unlawful rate increases went into effect), AT&T began withholding payment on some of the access charges improperly billed by INS. *Id.* ¶ 48. The amounts that AT&T has continued to pay to INS are based on estimates of the amount of INS's traffic that is not access stimulation traffic; for that traffic, AT&T has paid INS at the rate caps established by the Commission, namely $0.00819 per minute. *Id.* ¶¶ 48–52.[63]

60. On May 30, 2014, INS filed a collection action suit against AT&T, in the United States District Court for the District Court of New Jersey ("District Court"), alleging in two counts that AT&T had breached INS's state and federal tariffs by failing to pay for its purported CEA service.[64] On August 4, 2014, AT&T filed its Answer denying that it owed the charges, and Counterclaims for refunds and declaratory relief.[65]

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[62] *See, e.g.*, Ex. 3, INAD Tariff F.C.C. No. 1, § 2.4.1(B)(2)(c) ("In the event that a billing dispute concerning any rates or charges billed to the customer by Iowa Network is resolved in favor of Iowa Network, any payments withheld pending settlement of the dispute shall be subject to [a] late payment penalty").

[63] For the periods prior to when AT&T began withholding payments, AT&T paid INS the per-minute rate in its tariff for CEA services, even on access stimulation traffic where that tariff and rate are inapplicable for the reasons described herein. Through its counterclaims in the District Court, as well as this Complaint, AT&T seeks in damages refunds of the amounts AT&T paid INS for CEA service, but which INS improperly billed on access stimulation traffic. As noted above, AT&T is proposing to bifurcate its request for damages.

[64] Ex. 44, Complaint, *Iowa Network Services v. AT&T Corp.*, No. 14-cv-03439 (D.N.J. May 30, 2014) ("INS Complaint").

[65] Ex. 45, Defendant's Answer and Counterclaims, *Iowa Network Services v. AT&T Corp.*, No. 14-3439 (D.N.J. Aug. 4, 2014).

61. By order dated October 14, 2015, the District Court (i) denied INS's motion to dismiss AT&T's counterclaims; (ii) denied INS's motion for summary judgment, on the grounds that discovery had been stayed; and (iii) stayed the case and referred issues to the Commission under the primary jurisdiction doctrine. *See* Ex. 5, *Referral Order*, at 7–15. Applying a four factor test, the District Court explained that referral was appropriate for several reasons, including the Court's lack of familiarity with "the difference between Central Equal Access (CEA) services and [ordinary] switched access service." *Id.* at 13-14. While the Court noted INS's position that referral was not proper because of the chance of additional delay, the Court found that the need for the Commission's expertise outweighed the additional delay, if any. *Id.* at 14. The Court also rejected INS's argument that the dispute "can be resolved by simply applying the Tariff." It instead concluded that the facts at issue required "in depth knowledge of how the CE[A] process operates and whether those practices may be manipulated. This requires the knowledge of fair and unbiased experts of the FCC." *Id.* at 14–15.

II. INS'S PROVISION AND BILLING OF CEA SERVICE IN CONNECTION WITH ACCESS STIMULATION TRAFFIC IS UNLAWFUL.

A. INS's Billing of CEA Rates Under Its CEA Tariff in Connection with Access Stimulation Traffic Violates Sections 201(b) and 203 of the Act.

62. The INS tariff at issue in this proceeding (Tariff F.C.C. No. 1) is entitled "Centralized Equal Access Service" and it sets forth the "Regulations, Rates and Charges applying to *the Provision of Centralized Equal Access Service* within the certificated operating territory of Iowa Network Access Division in the State of Iowa." Ex. 3, INAD Tariff F.C.C. No. 1, at Original Title Page (emphasis added). By its terms, therefore, INS's tariff applies only to "Centralized Equal Access Service," and not other types of access services, like those provided on the access stimulation traffic at issue. *See, e.g., AT&T Corp. v. All Am. Tel. Co.*, 28 FCC Rcd. 3477, ¶¶ 35–37 (2013) (terms defining the scope of the tariff, including terms on the title page, are "fundamental to whether the access tariffs apply at all").

63. While the phrase "Centralized Equal Access Service" is capitalized throughout INS's tariff, the tariff does not include a definition of the service. However, the nature and purpose of that service has been the subject of numerous Commission decisions. Accordingly, the definition of "Centralized Equal Access Service," and the scope of INS's CEA tariff, must be determined in light of the common understanding of CEA service. *See AT&T Corp. v. YMax Commc'ns Corp.*, 26 FCC Rcd. 5742, ¶¶ 27 & n.92 (2011); *id.* ¶ 38 (when a tariff does not define terms, "we must construe these terms according to their common meaning in the industry") (citing cases).

64. As explained above, CEA service was introduced nearly 30 years ago for the limited purpose of facilitating the roll-out of equal access service on originating calls in rural areas for small volumes of traffic handled by small rural LECs. *See supra* Section I.A. In authorizing CEA service, the Commission also made clear its expectation that the provision of such service would be provided on a cost effective basis. *See id.*

65. The provision and billing of CEA service in connection with access stimulation traffic is not consistent with either of these two objectives. As explained in greater detail below, CEA service was never intended for use in connection with the enormous call volumes associated with access stimulation, and access stimulating CLECs bear no resemblance to the small-volume, rural LECs for which CEA service was designed. *See infra* Part II.A.1. Further, it is unjust and unreasonable to charge CEA rates (which were initially intended to lower the cost of sending very small volumes of long distance traffic to over one hundred small rural LECs, and which are priced on a traffic-sensitive, per minute basis) on access stimulation traffic (which involves sending very large volumes of traffic to one or more CLECs that have traffic volumes that are often equal to or exceed the volumes of the largest ILEC in a state). *See infra* Part II.A.2. There are alternative methods of terminating this traffic that are much more efficient, cost-effective, and consistent with

the Commission's objective of ensuring just and reasonable rates for switched access service. *See id.*

66. Because CEA service was never intended to apply to access stimulation traffic and is not a cost effective method of transporting such traffic, INS's imposition of its tariffed CEA rates on this traffic violates INS's tariff, and, in all events, is an unreasonable practice under Section 201(b) of the Act. *See infra* Counts I and II; AT&T Legal Analysis, Part I. Additionally, the provisions in INS's traffic agreements that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See infra* Section II.B. INS's conduct thus eliminates potential competition in the provision of transport services, it imposes excessive costs on IXCs and their customers, and it facilitates the ability of both INS and access stimulating CLECs like Great Lakes to exploit their respective bottleneck monopolies to the detriment of AT&T, other IXCs and ultimately their customers. *Id.*; *see* AT&T Legal Analysis, Part I.B.

1. CEA Service Was Never Intended for Use in Connection with Access Stimulation Traffic.

67. In the late 1980s, the Commission authorized the provision of CEA service in four separate states, but it never held that CEA service could be used for any and all purposes, and it certainly did not authorize INS or any other entity to provide CEA service in connection with access stimulation traffic. *See supra* Section I.A; AT&T Legal Analysis, Part I.A.

68. To the contrary, the Commission's authorizations were narrowly tailored to the specific matter at issue, *i.e.*, the roll-out of equal access service on originating calls in rural areas served by small rural LECs. For example, in its 1988 Order authorizing INS to provide CEA service in Iowa, the Commission stated that it was providing INS with the

> authority to lease and operate [DS-1s] in order to provide subscribers of the 136 participating independent Iowa telephone companies (ITCs) the benefits of equal

> access and interexchange carrier competition from a centrally located tandem switch in Des Moines, Iowa, [which would allow INS] to offer [IXCs] ... facilities to access [the] ITC subscribers from INAD's centralized switch in Des Moines.[66]

69. The Commission further made clear it was not adopting a "blanket policy" pursuant to which INS (or any other CEA provider) could expand the provision of CEA service to other service categories or other types of traffic that differed fundamentally from the type of traffic at issue in its authorization orders. *See Indiana Switch CCB Order* ¶ 23. As to future applications, the Commission expressly stated that they would "be examined independently on the unique facts and circumstances presented therein." *INS Order* ¶ 20 (quoting *Indiana Switch Review Order* ¶ 5). That requirement applied both to proposals to provide CEA service in other states and to material alterations in the scope or function of existing CEA arrangements. In fact, the Commission made that explicit by approving INS's authorization on the condition that the IUB would "not grant [INS] authority which would materially alter [INS's] projected inter- and intra-state usage of [INS's] system." *INS Recon. Order* ¶ 2.

70. As set forth above, and as INS's Annual Tariff Filings make clear, beginning around 2005, INS began transporting massive volumes of access stimulation traffic.[67] There is no question that the nature of that traffic differs fundamentally from the type of traffic at issue in INS's original authorization case. *See, e.g.*, *supra* Sections I.A, I.C. The FCPs that do business with access stimulating CLECs that have traffic agreements with INS have no need for 1+ dialing.

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[66] *In re Application of Iowa Network Access Div.*, 4 FCC Rcd. 2201, ¶ 2 (C.C.B. 1989) ("*INS Recon. Order*"); *see also Indiana Switch CCB Order* ¶¶ 2, 23; *SDCEA Order* ¶ 24; Ex. 12, *MIEAC Order* ¶¶ 2, 3.

[67] *See, e.g.*, Ex. 16, INS 2006 Tariff Filing, at 2 (attributing a projected 32% increase in CEA traffic in the test period ending June 30, 2007 to "a significant increase in toll aggregator traffic which began to appear during the last quarter of 2005"); Ex. 17, INS 2008 Tariff Filing, at 3–4 (for the test period ending June 30, 2009, INS "projects 1.6 billion terminating conference call minutes generated by call aggregators"); Ex. 19, INS 2012 Tariff Filing, at 2 ("[A]ggregator traffic is projected to increase 1.2%"); Ex. 22, INS 2016 Tariff Filing, at 2 ("IXC traffic delivered to LECs providing service to call aggregators is projected to increase 6.53%.").

Indeed, that capability is wholly irrelevant to access stimulation. *See* Habiak Decl. ¶ 19. The services provided by the FCPs almost exclusively entail the IXC's long distance customers placing calls to the FCPs' conference and chat equipment located at the access stimulating CLEC's central office. *Id.* Consequently, the FCPs have no need to place any long distance calls (and thus no need for equal access service). *Id.*[68]

71. Further, substantially all of the access stimulation traffic at issue is terminating, not originating traffic. *Id*. ¶ 20. As previously explained, terminating service is not a necessary component of CEA service. *See supra* Part I.A; Ex. 12, *MIEAC Order* ¶¶ 12, 14. In fact, the CEA arrangement approved for use in Minnesota does not require that switched access terminating traffic be routed over the CEA provider's network. *Id.* Instead, such service was approved by the Commission with the understanding that terminating access would be provided on "a voluntary, competitive basis," pursuant to which "IXCs will have the option to use [the CEA provider's] terminating tandem services, U.S. West's terminating services, Feature Group A and B arrangements, and/or their own trunks to complete calls to customers of the participating ILECs."[69]

72. The volume and nature of legitimate CEA traffic also differs markedly from access stimulation traffic. Legitimate CEA traffic involves very low volumes of traffic routed to a large number of small rural LECs, the mix of originating and terminating traffic is generally balanced, and the calls are, for the most part, directed to ordinary residential and business telephone customers. Habiak Decl. ¶¶ 21–22. Further, in authorizing INS's network, the Commission

[68] *See also* Report and Order, *Consideration of the Rescission, Alteration, or Amendment of the Certificate of Authority of All American to Operate as a Competitive Local Exchange Carrier within the State of Utah*, No. 08-2469-01, 2010 WL 1731201, at *10 (Utah P.S.C. Apr. 26, 2010) (finding that a chat line provider operating as part of an access stimulation scheme operated for six years without ever placing an outbound telephone call).

[69] Ex. 12, *MIEAC Order* ¶ 12 (emphasis added) (noting MIEAC "will charge IXCs only for those minutes of use which they choose to terminate over the proposed system").

specifically noted that that "the majority of the network's costs" for providing CEA service were expected to be "recovered from intraLATA toll calls." *See INS Order* ¶ 32.

73. Access stimulation traffic, by contrast, involves massive calling volumes, and is directed to a limited number of high capacity telephone lines, which have been assigned to FCPs that have nothing in common with the rural end user customers for which CEA service was intended to benefit. Habiak Decl. ¶ 21. Further, nearly all of the traffic consists of terminating interstate calls, not intrastate calls. *Id.* ¶ 20.[70] Yet, when the Commission approved INS's CEA arrangement, a key assumption was that the most calls would be intrastate, and that the majority of network costs would be recovered via intrastate toll services, not from interstate ratepayers. *INS Order*, ¶¶ 32–33.

74. Finally, INS recently filed revisions to its CEA tariff in which INS concedes that its tariffed CEA service is "not like" a service that transports traffic to CLECs engaged in access stimulation. *See* Ex. 46, Transmittal No. 33, Iowa Network Services, Revisions to Tariff F.C.C. No. 1, § 7.1.1 (filed Apr. 14, 2017) ("INS April 2017 Revised Tariff Filing") (emphasis added). In this filing, INS sought to amend its interstate CEA tariff to provide a different service, designated "High-Volume Traffic Contract Tariff No. 1," that would have applied only to terminating traffic delivered to CLECs engaged in access stimulation.[71] This "high volume

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[70] *See also* Ex. 2, INS Worksheet (Aureon 02698–99) **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[71] *See* Ex. 46, INS April 2017 Revised Tariff Filing, Description and Justification and Cost Support Material ("Contract Tariff Support") and Proposed Revised Tariff Pages (filed April 14, 2017; effective April 29, 2017) ("Revised Tariff Pages"). Section 7.1.2 (Revised Tariff Page 146.2) defines "High-Volume Traffic" as terminating traffic routed to one of eight designated OCNs. *See also* Revised Tariff Page 146 (§7.1). The designated OCNs are associated with the following CLECs—all of which are engaged in access stimulation: Reasnor Telco, LLC (OCN 739d); BTC, Inc.-IA (OCN 156c); Great Lakes Com-IA (OCN 345d); Omnitel Comm-IA (OCN 3620); Goldfield Access Network (OCN 7094); Interstate Cable vision Company (OCN 860E); Premier Comm-IA (OCN 904D); and Louisa Communication (OCN 4560). *See* Ex. 80, AT&T Billing Summary, at 13–20.

traffic" service was proposed to be offered at a lower rate ($0.00649 per minute) than INS's CEA service, and a prerequisite to receiving service was that the customer would have needed to sign a separate contract with INS and to agree not to challenge any of INS's rates. *See id*. Revised Tariff Pages 146.6 (§7.1.8), 146 (§7.1), 146.7 (§7.1.8(D)), 146.18 (§7.1.17). The Revised Tariff Pages also made clear that that this "high volume traffic" service would have been "provided subject to additional terms and conditions that are not applicable to centralized equal access service," and thus INS itself recognizes that a service transporting calls to CLECs with high volumes of access stimulation traffic is "not like the centralized equal access service" otherwise provided and described in INS's CEA tariff. *See id*. Revised Tariff Page 146.1 (§7.1.1) (emphasis included); *see also id.* Revised Tariff Pages 146.3 (§7.1.3), 146.4 (§7.1.4), 146.5 (§7.1.5), 146.11 (§7.1.12), 146.15-16 (§7.1.16) (identifying some but not all of the different terms and conditions).[72]

75. In sum, CEA service was not designed nor was it intended for use with access stimulating traffic. Accordingly, INS's tariff, which is for "Centralized Equal Access Service," cannot reasonably be interpreted to encompass the traffic that INS handles for CLECs engaged in access stimulation and, as a result, there was no lawful basis for INS to have assessed tariffed CEA rates with respect to such traffic. *See* AT&T Legal Analysis, Part I.

[72] By letter dated May 16, 2017, INS sought permission to withdraw its proposed contract tariff service and to substitute a new "volume discount" service offering the same rate ($0.00649 per minute) and requiring that the customer have a "minimum monthly usage of at least 25 million interstate, interlata minutes and 80% of greater utilization of each trunk group" and sign a separate service agreement. *See* Ex. 47, Application No. 8 at Second Revised Tariff Page 137, § 6.73 (filed May 16, 2017) ("INS May 2017 Revised Tariff Filing"). Like its high volume contract tariff service, INS's volume discount service is targeted at access stimulation traffic and thus further underscores that INS's CEA tariff is limited in scope. *See* AT&T Legal Analysis, Part I. Indeed, the fact that INS found it necessary to seek to amend its CEA tariff to offer a different, high volume access service that is not like INS's CEA service confirms AT&T's position that INS's CEA rate cannot properly be applied to transport of high volumes of terminating traffic to access stimulation CLECs. *See* Legal Analysis, Part IV.

2. The Provision and Billing of CEA Service in Connection with Access Stimulation Traffic Is Not Cost Effective; More Efficient Alternatives Exist for the Transport of Such Traffic.

76. In initially authorizing the provision of CEA service, the Commission made clear that one of the key purposes of this type of arrangement was to facilitate the provision of equal access service on a cost effective basis. *See e.g.*, *Indiana Switch CCB Order* ¶ 23. As the Commission explained in its *Alpine* decision, CEA service was intended "to *lower* the cost of transporting traffic from [INS's tandem] to the various remote rural exchanges." *Alpine* ¶ 29; *see also Indiana Switch Review Order* ¶ 5. The Commission further recognized that "increased efficiency and reduce[d] costs to customers" could be achieved if IXCs had the option of using alternative methods of transporting terminating traffic. Ex. 12, *MIEAC Order* ¶ 14.

77. As explained below, the evidence clearly shows that other methods of routing access stimulation traffic to the access stimulating CLEC's end office switch are much more efficient than CEA service, and therefore more beneficial to long distance carriers and their customers. Perhaps the most efficient method of routing such traffic (given the enormous call volumes at issue) would be via a direct trunking arrangement from the IXC to the access stimulating CLEC's end office switch.[73] During 2014 and 2015, approximately **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** minutes of AT&T long distance traffic were routed over INS's network to Great Lakes' end office switch at INS's CEA rate of about 0.9 cents per minute, for a total charge by INS of **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**. *See* Habiak Decl. ¶¶ 25–26; *see also* Ex. 48, Declaration of John W. Habiak, *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-

[73] In its opposition to AT&T's Forbearance Petition, INS effectively admits that if given a choice, IXCs would ask for direct trunks to transport access stimulation traffic. *See* Ex. 38, INS Forbearance Opp., at ii (noting that "direct trunk bypass" would allow AT&T to avoid paying "a higher CEA rate.").

16-MD-001, ¶ 27 (filed Aug. 16, 2016) ("Habiak GLCC Decl."). If that traffic had instead been delivered directly to Great Lakes' end office switch over direct trunking facilities priced at CenturyLink's rates for direct connection service, the per-minute cost to AT&T would have been between 0.025 cents and 0.04 cents per-minute. Habiak Decl. ¶ 25; *see also* Ex. 48, Habiak GLCC Decl. ¶ 22. Using the more conservative higher number (0.04 cents per-minute), the total cost to AT&T would have been $1.1 million, which equates to savings of over **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** compared to INS's (inapplicable) rate for CEA service. Habiak Decl. ¶ 26; *see also* Ex. 48, Habiak GLCC Decl. ¶ 22.

78. Moreover, that is not the only alternative method of connection that would have resulted in substantial savings. Another option, which AT&T currently employs in connection with the transport of access traffic to a large access stimulating CLEC in South Dakota (Northern Valley Communications Corp. ("NVC")), involves a contractual agreement with the CEA provider in South Dakota for direct transport to NVC's end office switch in Groton, South Dakota. *See* Habiak Decl. ¶ 27; Ex. 49, AT&T-SDN Service Agreement (dated Sept. 18, 2014). The rate in that agreement serves as a reasonable proxy that can be used to estimate the savings that would result from a similar agreement with INS. The per-minute rate charged by SDN in that agreement is **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* Habiak Decl. ¶ 27; Ex. 49, AT&T-SDN Service Agreement, Attachment 1.

79. Another proxy that can be used to estimate the savings compared to the INS CEA rate is the rate at which **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted] **[[END CONFIDENTIAL]]**[74] Assuming that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Using that monthly rate the total cost of transporting that traffic for the period 2014 to 2015 would be **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See* Habiak Decl. ¶ 28.[75]

80. Finally, that the actual cost of transporting access stimulation traffic to Great Lakes' network is quite low also draws support from the fact that **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted]

[74] *See e.g.*, Ex. 50, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**; *see also* Ex. 27, Sherlock Dep. at 66:20–68:7 (noting that INS has two tandem switches (one at Kamrar, the other at Des Moines to handle access traffic; the Kamrar switch is used for terminating traffic)).

[75] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Habiak Decl. ¶ 28.

[redacted] **[[END 3P HIGHLY CONFIDENTIAL]]** it necessarily follows that the actual per-minute cost of transporting the large volumes of traffic to Great Lakes' network is quite small. That conclusion is also evidenced by the fact that INS has entered into contracts with a number of CLECs **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

B. The Terms in INS's Traffic Agreements Are Anticompetitive.

81. As explained above, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See supra* Section I.D. That requirement is not consistent with the Commission's pro-competitive policies and is, in fact, anticompetitive. *See also* Legal Analysis, Part I.B.

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[76] **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]** *See* Ex. 52, Supplemental Brief of AT&T Corp., *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-16-MD-001, at 4, 10, App. A (filed Jan. 10, 2017) ("AT&T Supp. Br.").

[77] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

82. In its decision approving CEA service in Minnesota the Commission expressly recognized the potential benefits associated with providing IXCs with multiple options for the termination of long distance traffic. Ex. 12, *MIEAC Order* ¶¶ 12, 14. As the Commission specifically noted, by "provid[ing] interstate and intrastate terminating access on a voluntary, competitive basis," MIEAC "has demonstrated its willingness to incorporate sufficient flexibility into its network to warrant increased efficiency and reduce[d] costs to customers." *Id.* Further, in *PrairieWave*, the Commission unambiguously determined that a CLEC has a duty to "permit an IXC to install direct trunking from the IXC's point of presence to the [C]LEC's end office, thereby bypassing any tandem function."[78] As such, under these Commission orders, neither a CEA provider nor a CLEC can lawfully compel long distance carriers to transport access stimulation traffic to the CLEC via the CEA provider. Ex. 12, *MIEAC Order* ¶¶ 12, 14; *PrairieWave* ¶ 27. Yet, that is precisely the position taken by INS. *See* Ex. 38, INS Forbearance Opp., at 9–10.

83. **[[BEGIN CONFIDENTIAL]]** [redacted]

[78] *In re Access Charge Reform PrairieWave Telecomms., Inc.*, 23 FCC Rcd. 2556, ¶ 27 (2008) ("*PrairieWave*"). Although the Commission approved INS's mandatory use proposal, a key basis for that decision was the belief that the rural LEC participants in INS "are not subject to MFJ requirements that they allow the interexchange carrier to choose the point of connection." *INS Order* ¶ 33. That rationale is not only inconsistent with the *Indiana Switch CCB Order* (which the Commission recently re-affirmed in *Alpine* (*see* AT&T Legal Analysis, Part I.C.4)), it also has absolutely no application to access stimulating CLECs, which, for the reasons explained here and in the pending referral in *Great Lakes v. AT&T*, in fact have a duty to direct connect with IXCs.

[redacted]

[79] To be sure, the fact that **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]** **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Notably, in settlement discussions with one access stimulating CLEC, the CLEC declined to allow AT&T to use a direct connection to reach its network unless, *inter alia*, AT&T agreed to indemnify the CLEC against claims that INS might assert against it. Habiak Decl. ¶ 31. Further, in other cases, when AT&T has approached CLECs with requests for direct connections, AT&T has often been told that such arrangements are not permissible. *Id*. ¶¶ 31–32.

[redacted] **[[END CONFIDENTIAL]]**

85. *Finally*, by insisting that the outdated "mandatory use requirement" associated with legitimate CEA traffic applies to access stimulation traffic, INS has created a price umbrella which has permitted **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**[81] Because IXCs are required by the Commission's rules to complete access stimulation calls, they face a Hobson's choice: either pay INS's tariffed CEA rate or pay an unreasonable premium for a direct connection. *Cf. CLEC Access Order* ¶ 2. Neither choice is efficient, and both result in the IXC and its customers incurring additional costs.

[80] The rate that INS has recently filed in connection with its contract tariff/volume discount services ($0.00649 per minute) is excessive when compared to the rates for the alternative services described in Section II.B *supra.* Indeed, it is very difficult to reconcile INS's proposed rate for those services ($0.00649 per minute) with **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]** Additionally, the documentation that INS filed in support of its $0.00649 rate raises many of the same questions that apply to INS's rate filings for its CEA service. *See* Rhinehart Decl. ¶ 5, n.6. Finally, INS's inclusion of a requirement in its proposed contract tariff service offering that customers agree as a condition to obtaining service that they will not challenge any of INS's rates (*see* Ex. 46, INS April 2017 Revised Tariff Pages 146.7 (§7.1.8(D)), 146.18 (§7.1.17)) is another example of INS's seeking to leverage its bottleneck monopoly. Because INS has not disclosed the terms of the separate service agreement that must be signed to obtain its new "volume discount" service, it is not known whether a comparable provision is included in that agreement.

[81] *See* Habiak Decl. ¶ 32; *see also* Ex. 52, AT&T Supp. Br. at 9–10; *CLEC Access Order* ¶ 37 ("[I]t is highly unusual for a competitor to enter a market at a price dramatically above the price charged by the incumbent").

III. INS HAS VIOLATED THE COMMISSION'S RATE CAP AND RATE PARITY RULES.

86. For the small fraction of INS's traffic that is not associated with access stimulation and that could be billed pursuant to INS's CEA tariff, INS has unlawfully overcharged AT&T by violating the Commission's rate cap and rate parity rules.

87. As set forth in Section I.E., *supra*, in 2011, the Commission issued new rules that began broad reform of intercarrier compensation, including a "transition" period for certain access charges that also set forth a "rate cap" for all interstate rates and "rate parity" rules for intrastate rates. *Connect America Order* ¶¶ 739, 798–808; *see* 47 C.F.R., Part 51, Subpart J. The rate cap rule generally requires carriers providing interstate switched access services to cap their rates at levels that were in place on December 29, 2011. *See Connect America Order* ¶¶ 799–801; *see also* 47 C.F.R. § 51.905(b) (a LEC is "required to tariff rates no higher than" the cap). The rate parity rules require that rates for certain intrastate access services be reduced to match the capped rates for interstate access services by July 1, 2013. *Connect America Order* ¶¶ 799–801 & Figure 9.

88. As explained in more detail below, INS is unquestionably subject to these rules because it is a LEC that has provided exchange access service for nearly three decades. *See infra* Sections III.A-B. INS, which is owned by various LECs, was created to provide intermediate access services between long distance carriers and other LECs in connection with those LECs' exchange access services. *Id.* Further, the Commission has consistently regulated INS as a LEC, and INS has affirmatively and repeatedly contended it is a LEC – indeed, it has done so in its most recent tariff filings. *Id.* As such, INS is subject to the Commission's rate cap and rate parity rules for its switched access services. *Id.*

89. Even though it is subject to these rules, INS has violated them, both by filing an interstate CEA rate above the applicable rate cap and by failing to reduce its intrastate rates to match the capped interstate rates. *See infra* Section III.C.

A. The Commission's Rate Cap and Rate Parity Rules Apply Broadly to All Switched Access Services.

90. In 2011, the Commission substantially reformed its access charge rules, and created several new rules on pricing for those services that apply during a transition period. *Connect America Order* ¶¶ 736–846 (2011); *see* 47 C.F.R., Part 51, Subpart J (entitled "Transitional Access Service Pricing"). As the text of those rules makes clear, the "scope" of the "transitional access service pricing rules" is broad, and the rules apply to any "telecommunications traffic exchanged between telecommunications providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access." 47 C.F.R. § 51.901(b). It is undisputed here that AT&T and INS are "telecommunications providers," that the calls routed between AT&T and INS are "telecommunications traffic," and that, more specifically, INS's services are "interstate or intrastate exchange access." *See* 47 U.S.C. §§ 153(20), (51), (53), (54). As such, the Commission's transitional rules (including the rate cap and rate parity rules) apply here, and INS's rates for interstate switched access services are capped at the levels that were in place on December 29, 2011. 47 C.F.R. §§ 51.901, 51.907–51.911. In addition, INS's intrastate rates should now be priced no higher than INS's capped rates for interstate services. *Id.*[82]

91. Although the plain text of Section 51.901(b) is unmistakably clear, the Commission further explained, when it issued the rules, that its intent was to subject "*all*" interstate switched

[82] The Commission's rate parity rules apply to "intrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates." *Connect America Order*, Figure 9. INS's intrastate CEA tariffs contain rates that apply to both originating and terminating traffic, and, as such, once rate parity was required, INS should have lowered its intrastate rates to the capped interstate rate.

access services to the rate caps in the transitional rules. *Connect America Order* ¶¶ 798, 800–01 (emphasis added); *see also id.* ¶ 800 (the Commission "capp[ed] *all* interstate switched access rates in effect as of the effective date of the [2011] rules." (emphasis added)); *id.* ¶ 801 ("at the outset of the transition, *all* interstate switched access and reciprocal compensation rates will be capped at rates in effect as of the effective date of the rules." (emphasis added)); 47 C.F.R § 51.901(b). If the Commission had intended to exclude certain types of access services, such as the access services tariffed by INS, the Commission would not have used the word "*all*" in the *Order*.[83]

B. INS Provides Exchange Access Services, and It Is Undoubtedly a LEC.

92. The Commission's rate cap and rate parity rules, which are part of the transitional rules in Subpart J of Part 51, apply to "any" type of local exchange carrier. *See* 47 C.F.R. §§ 51.909–11. There is no doubt that INS is a LEC.[84] Under the Act, a LEC is an entity (other than a CMRS provider) that is "engaged in the provision of telephone exchange service *or exchange access*." 47 U.S.C. § 153(32) (emphasis added). In turn, "exchange access" is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." *Id.* § 153(20). That is precisely what INS does.

93. In fact, when the Commission initially authorized INS to provide service, it explained that "[INS's] network will serve as an integral link in originating and terminating the interstate traffic of IXCs." *INS Order* ¶ 9. The Commission went on to state that INS is "a

[83] **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]**

[84] As discussed in AT&T's Legal Analysis, there may be some question as to what type of LEC INS is, but INS plainly meets the statutory and regulatory definitions of a "LEC." *See* Legal Analysis, Part II.A.

dominant *carrier providing exchange access services* subject to Title II regulations." *Id.* ¶ 10 (emphasis added). As such, INS fits squarely within the definition of LEC in the Act and the Commission's rules. 47 U.S.C. § 153(20); *see* 47 C.F.R. § 51.5 ("A LEC is any [entity] engaged in the provision of telephone exchange service or exchange access."). Indeed, there is not a single Commission or court decision that either has altered this determination or has found that INS is not providing exchange access service or is not a LEC.

94. That INS is a LEC offering exchange access services is also clear from the tariffs that is has long had on file with the Commission. In the first section of its CEA tariff, called "Application of Tariff," INS states that this "tariff contains regulations, rates and charges applicable to the provision of Switched Access Services" that are "provided by [INS]."[85] Section 6 of the Tariff is entitled "Switched Access Service," and it provides that INS is making "Switched Access Service ... available to Customers."[86]

95. INS's tariff for CEA services offers a specialized bundle of tandem switching and tandem switched transport, which, as described above, were designed for the limited purpose of facilitating equal access on low volumes of originating traffic handled by numerous small rural carriers.[87] These services (although not applicable to access stimulation traffic) are unquestionably switched access services under the Act and the Commission's rules. 47 U.S.C. § 153(20); 47 C.F.R. § 51.903(i) (defining "Tandem-Switched Transport Access Service" as "Tandem switching and common transport between the tandem switch and end office"); *see also* 47 C.F.R. § 61.26(a)(3)(i) (tandem services included in definition of switched exchange access);

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[85] Ex. 3, INAD Tariff F.C.C. No. 1, § 1.1, 2nd Revised Page 16 (issued Oct. 27, 2000).

[86] *Id.* § 6.1, 4th Revised Page 88 (issued Jan. 12, 2012). INS's tariff further provides that "[r]ates and charges for Switched Access Service are set forth in [Section] 6.8 following." *Id.*

[87] *Id.* ("General" description of INS's service); *id.* § 1.2, 2nd Revised Page 16 (the services "under this tariff" include "the use of [INS's] central access tandem [and] the switched transport between an [INS] premises and such central access tandem").

id. § 69.2(ss) (defining tandem-switched transport as a type of switched access service); *id.* § 69.111 (discussing tandem switched transport and tandem charges for switched access service).

96. Indeed, in 1998, INS expressly represented to the Commission that "INS provides exchange access services to interexchange carriers and therefore *meets the definition of a local exchange carrier*."[88] In other proceedings, INS has also conceded, and courts have determined, that INS is a LEC. *See, e.g.*, Ex. 55, Opening Brief of Plaintiff Iowa Network Services, Inc. In Opposition to Motion of Qwest Corporation for Summary Judgment, *Iowa Network Servs., Inc. v. Qwest Corp.*, No. 02-40156, at 7 (S.D. Iowa Aug. 11, 2004) ("INS provides exchange access in conjunction with the many rural LECs which formed INS . . . . *Because INS provides exchange access, it is a LEC*." (emphasis added)). Based on this statement, at least one court has concluded that INS is an LEC. *Iowa Network Servs. v. Qwest Corp.*, 385 F. Supp. 2d 850, 897 (S.D. Iowa 2005) ("INS is, however, a LEC").

97. Further, before the District Court, one of INS's primary arguments in favor of its collection action claims was that its CEA service tariff is "deemed lawful" pursuant to Section 204(a)(3) of the Act.[89] However, the only type of carrier that may file a tariff pursuant to Section 204(a)(3) is "[a] local exchange carrier." 47 U.S.C. § 204(a)(3). Notably, the transmittal letters of INS's tariff filings, including its recent tariff filings that it made in April and May of this year, *see* Exs. 46 and 47, provide on their face that the tariff purports to be "Filed Pursuant to § 204(a)(3)" – and thus INS is necessarily conceding that it is a "local exchange carrier" within the meaning of the Act.

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[88] *See* Ex. 53, Letter from James U. Troup and Brian D. Robinson (Counsel for INS) to Sherly Todd (FCC), dated Apr. 30, 1998 (emphasis added).

[89] Ex. 44, INS Complaint ¶ 98; Ex. 39, INS Motion to Dismiss, at 1–2; Ex. 40, INS Motion for Summary Judgment, at 8.

98. Finally, even though INS has tariffed only CEA service and acts only as an intermediate carrier, INS is still a LEC under the Act and the Commission's rules. As the Commission has found, INS offers exchange access services. *INS Order* ¶¶ 9–10. Nor is there any merit to the claim that INS and other CEA providers are somehow exempt, *sub silentio*, from the *Connect America Order* and the rules the Commission issued with that *Order*. The fact that that *Order* does not expressly mention INS or other CEA providers does not mean that INS is outside the scope of that *Order* and the Commission's rules. Rather, as explained above, the Rules apply to *all* LECs, and the rate caps apply to "*all*" switched access services. *Connect America Order* ¶¶ 799–801. INS can point to nothing in the *Connect America Order* that supports any type of exemption from this broad language for INS or other CEA providers.

C. As a LEC Offering Switched Access Service, INS Violated the Commission's Rate Cap and Rate Parity Rules.

99. As of December 29, 2011, INS's tariffed rate for its CEA service was $0.00819 per minute,[90] and was thus capped at that level. *See* 47 C.F.R. § 51.905(b) (under the transitional Rules, LECs "are required to tariff rates no higher than the default transitional rate specified by [Subpart J to Part 51]"). Nevertheless, on June 17, 2013, INS filed a tariff providing that the rate for its CEA service would be $0.00896 per minute.[91] INS has maintained that rate in subsequent tariff filings, and INS's current CEA tariff includes that rate.[92]

100. INS's state tariffs also violate the Commission's rate parity rules. *Connect America Order* ¶¶ 35, 804 & Figure 9. Under those rules, INS was required, over a two year period, to

[90] Ex. 41, INAD Tariff F.C.C. No. 1, 10th Revised Page 145; *see also* Ex. 18, INS 2010 Tariff Filing, at 2 (INS "proposes to maintain its existing switched transport rate of $0.00819 per minute of use").

[91] Ex. 43, INAD Tariff F.C.C. No. 1, 12th Revised Page 145; *see also* Habiak Decl. ¶ 37.

[92] *See, e.g.*, Ex. 22, INS 2016 Tariff Filing, at 4 (INS "proposes to maintain its existing switched transport rate of $0.00896 per minute of use").

reduce its intrastate rates to be at parity with its capped interstate rates. *Id.* Specifically, the Commission's rules provide that, by July 1, 2013, "[i]ntrastate terminating switched end office and transport rates . . . and reciprocal compensation, if above the carrier's interstate access rate, are reduced to parity with interstate access rate." *Id.* Figure 9.[93] As noted above, INS's rate for its interstate CEA service is capped at $0.00819 per minute. However, INS has never reduced its intrastate rate to be at parity with this interstate cap. *See* Habiak Decl. ¶¶ 38–39. Under its Iowa tariff, INS's intrastate CEA rate has been and remains at a level ($0.0114 per minute not including transport) that is well above INS's capped interstate rate. *Id.*[94]

101. These facts establish that INS's tariffs violate the Commission's rules. INS was required to file tariffs with rates that did not exceed the Commission's rate cap and rate parity rules. *Connect America Order* ¶¶ 799–801; 47 C.F.R. § 51.905(b). It did not do so. Instead, starting in 2013, it filed interstate tariffs with rates that plainly exceed the applicable rate cap, and by doing so, INS violated the Commission's rules and Sections 203(c) and 201(b) of the Act. *See* AT&T Legal Analysis, Part II. Likewise, as of July 1, 2012 and July 1, 2013, INS was obligated to re-file its intrastate access tariffs to reduce its intrastate CEA rates, and bring them into parity with its interstate CEA rate. *Connect America Order*, ¶¶ 799–801. Again, it failed to do so, and for this additional reason, INS has violated the Commission's rules, and Sections 203 and 201(b) of the Act. *See* AT&T Legal Analysis, Part II. Because INS's tariffs were not properly filed and

[93] In addition, by July 1, 2012, "[i]ntrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates, if above the carrier's interstate access rate, are reduced by 50 percent of the differential between the rate and the carrier's interstate access rate." *Connect America Order*, Figure 9 (footnotes omitted).

[94] *See also* Ex. 54, INS Iowa Tariff (Iowa State Utilities Board) No. 1, at 242 (dated Dec. 2, 1988).

thus never became effective, AT&T was justified in withholding payments, both pursuant to INS's tariffs and under the Act. *See id.*[95]

IV. INS HAS VIOLATED THE COMMISSION'S ACCESS STIMULATION RULES.

102. Even assuming, *arguendo*, that as to the access stimulation traffic it carried, INS could properly bill its CEA rates pursuant to its existing CEA tariff, INS has violated Sections 201(b) and 203 of the Communications Act because it is engaged in "access stimulation" under the Commission's rules but has not complied with those rules. *See infra* Sections IV.A & B. Having failed to file revised tariffs that comply with the Commission's rules for entities engaged in access stimulation, INS is liable under the Communications Act and is subject to refund liability. *See infra* Section IV.C.

A. INS Has Presumptively Engaged in Access Stimulation.

103. In 2011, the Commission issued rules intended to curtail "access stimulation," finding that when LECs enter into arrangements that result in "significant increases in switched access traffic with unchanged access rates," the result is "inflated profits" and rates that "almost uniformly" are "unjust and unreasonable under Section 201(b) of the Act." *Connect America Order* ¶ 657. As noted above, over the last decade, INS's traffic, by its own admission, has significantly increased as a result of INS's carriage of significant volumes of access stimulation traffic. *See supra* Section I.B. In 2003, for example, INS's traffic for its tariffed centralized equal access service was about 830 million minutes of use. *Id.* By 2011, INS's traffic was over 3.88 *billion* minutes, and this increase was almost entirely the result of INS's decision to transport access stimulation traffic over its network. *See supra* Sections I.B and I.D.

[95] In the district court case, INS raised two primary arguments in claiming that its tariffs did not violate the Commission's rate cap and rate parity rules. First, it claimed that it was not a LEC under the Commission's transitional rules. Second, it claimed that its tariff was "deemed lawful." For the reasons explained in AT&T's Legal Analysis (*see* Parts II.A and B), these defenses lack merit.

104. In the *Connect America Order*, the Commission noted that "[a]ccess stimulation imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment." *Connect America Order* ¶ 663; *see id*. (customers of long distance and wireless carriers ultimately bear the burden of the costs of access stimulation, and support the access stimulating LECs and their free chat line/conference partners). For these reasons (among others), the Commission took "action to address the adverse effects of access stimulation and to help ensure that interstate switched access rates remain just and reasonable, as required by section 201(b) of the Act." *Id.* ¶ 662.

105. Among other things, the Commission developed a definition of access stimulation "to identify when an access stimulating LEC must refile its interstate access tariffs at rates that are presumptively consistent with the Act." *Id.* ¶ 667. For this purpose, the Commission has determined that access stimulation occurs when a LEC, like INS, meets the following two conditions:

> (i) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account; and
>
> (ii) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year.

47 C.F.R. § 61.3(bbb); *see also Connect America Order* ¶ 667. This definition was intended to "[f]acilitate enforcement of the new access stimulation rules in instances where a LEC meets the conditions for access stimulation but does not file revised tariffs." *Id.* ¶ 659.

106. Further, the Commission determined that, "a complaining carrier may rely on the 3:1 terminating-to-originating traffic ratio and/or the traffic growth factor for the traffic it exchanges with the LEC as the basis for filing a complaint. This will create a rebuttable presumption that revenue sharing is occurring and the LEC has violated the Commission's rules." *Id.* ¶ 699.

107. INS bills AT&T substantially more terminating access traffic than originating access traffic. Habiak Decl. ¶¶ 41–42. In July 2014, for example, INS's billed minutes for terminating interstate switched access services were more than 30 times the volume of the originating interstate switched access services it provided. *Id.* ¶ 41. Further, INS's own tariff filings in 2012 and 2013 disclose INS's projected originating and terminating traffic volumes, and INS's own calculations show that its ratio of terminating to originating traffic is about 11-to-1. *See* AT&T Legal Analysis, Part III (citing filings). Accordingly, INS is presumptively engaged in access stimulation. *Connect America Order* ¶ 699.

B. INS Has Revenue Sharing Agreements.

108. In the District Court, INS denied that it has revenue sharing agreements within the meaning of the Commission's rules.[96] Whether INS can provide valid evidence to support that claim, and successfully rebut the presumption that INS is engaged in access stimulation, may entail factual issues and discovery into INS's business arrangements, including its arrangements with LECs engaged in access stimulation. To that end, AT&T is requesting, in the interrogatories being filed with this Complaint, the discovery needed for AT&T to probe INS's arrangements with LECs and/or with FCPs engaged in access stimulation.

109. Even though further discovery is being sought, the existing evidence establishes that INS has agreements with a number of Iowa LECs that are engaged in access stimulation. As

[96] *See* Ex. 39, INS Motion to Dismiss, at 23–24.

described above in Section I.D *supra*, INS has entered into traffic agreements **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** that not only have facilitated these CLECs' participation in access stimulation, but were a necessary precondition to that activity. As discussed in more detail in AT&T's Legal Analysis, (*see* Part III), INS's agreements with **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** constitute "access revenue sharing agreements" within the meaning of the Commission's rules. 47 C.F.R. § 61.3(bbb)(1)(i); *see Connect America Order* ¶¶ 668–74; *see also In re Connect Am. Fund*, 27 FCC Rcd. 605, ¶ 27 (W.C.B. 2012) ("*CAF Clarification Order*") (providing additional guidance on the definition of revenue sharing agreement).

110. Under its traffic agreements with the access stimulation CLECs, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** As such, INS's agreements with the access stimulation CLECs are "revenue sharing agreements" within the meaning of the Commission's rules. *See* AT&T Legal Analysis, Part III.B.

111. INS is also directly responsible for the net payments that access stimulating CLECs in Iowa have been able to share with their FCP partners. Without the INS traffic agreements, the access stimulation calls could not have been completed and, as a consequence, there would have

been no revenue for the access stimulating CLECs to share with their FCP partners.

112. Further, and as explained in Sections I.B and I.D above, INS has greatly benefited from the access stimulation traffic transported pursuant to these traffic agreements with access stimulating CLECs. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** which led to the rapid growth of the access stimulation business in Iowa.[97] As a result of that rapid growth in call aggregation traffic, INS has over-earned (by a wide margin) its authorized rate of return in certain years.[98] In addition, it has used the added revenues resulting from access stimulation to expand both its network and its business.[99]

113. In this regard, the arrangements between INS, the access stimulating CLECs and the FCPs are like the access revenue sharing scheme at issue in *AT&T Corp. v. All American Telephone Co.*, 28 FCC Rcd. 3477 (2013). There, the intermediate provider of access service was Beehive, and even though it set up the arrangements so that it did not directly contract with the participating FCPs, it "still made money" because it charged "the IXCs for tandem switching and transport of the stimulated traffic, which benefited Beehive." *Id.* ¶ 28. In the same way, access stimulating CLECs have "generate[d] enormous volumes of telephone calls" to INS, and its resulting "access billables were huge." *Id.*

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[97] The fact that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** in no way detracts from the significant impact that INS's willingness to carry such traffic has had on the phenomenal growth of access stimulation in Iowa.

[98] *See* Ex. 17, INS 2008 Tariff Filing, at 1 (for the period 2005/2006 INS experienced a return of 38.63%); Ex. 20, INS 2013 Tariff Filing, at 1 (INS regulated revenue resulted in a "return of 64.57% on its interstate investment").

[99] *See supra* note 43 (compiling upgrade investment outlays from INS's tariff filings).

114. In short, the INS/CLEC traffic agreements are part of an overall access stimulation scheme that benefits the CLECs, the FCPs and INS, at the expense of AT&T and its long distance ratepayers. Additionally, even if INS were somehow outside the broad confines of the Commission's access stimulation rules, INS's conduct would be unreasonable under Section 201(b) for a separate reason. *See* AT&T Legal Analysis, Part III.C. If the access stimulating CLECs were directly providing the transport that INS has billed, there is no question that such transport would be subject to the pricing constraints in the Commission's access stimulation rules. 47 C.F.R. § 61.26(g). It is thus unreasonable for INS to carry that same traffic at its high CEA rates, particularly because INS's CEA rates acted as a price umbrella that has caused alternatives to INS's service to be priced at unreasonable levels. *See* AT&T Legal Analysis, Parts I.B, I.C.4 and III.C.

C. INS Was Obligated But Failed to File a Revised Tariff.

115. Because INS has been engaged in access stimulation as defined in the Commission's rules, it was required to file revised tariffs when the Commission's new rules regarding access stimulation became effective in late 2011. *Connect America Order* ¶ 679 ("If a LEC meets both conditions of the definition [of access stimulation], it must file a revised tariff . . . .").

116. That did not occur. INS did not file, and to this date has not filed, revised tariffs that purport to comply with the Commission's access stimulation rules. As the Commission has held, "a LEC's failure to comply with the requirement that it file a revised tariff if the trigger is met constitutes a violation of the Commission's rules, which is sanctionable under section 503 of the Act." *Id.* ¶ 697. Additionally, "such a failure would constitute 'furtive concealment,'" which means that INS is subject to "refund liability" as of the date on which the revised tariff was required to be filed. *Id.*

117. As explained in greater detail in AT&T's Legal Analysis, under the Commission's access stimulation rules, INS should have filed rates consistent with the rates offered by the lowest price cap ILEC (*i.e.*, Century/Link). *See* AT&T Legal Analysis, Part III.B. Given the volumes at issue in this proceeding, the functionally equivalent service offered by CenturyLink would be a direct connection. *See* Habiak Decl. ¶¶ 23, 25. Accordingly, the applicable benchmark rate was the CenturyLink rate for a direct connection, which would have enabled AT&T and its customers to avoid millions of dollars of unnecessary and inefficient access charges. *See infra* Section II.B; Habiak Decl. ¶¶ 25–26.

V. INS HAS IMPROPERLY AND UNREASONABLY MANIPULATED ITS RATES.

118. In addition to its unlawful tariff and charges, INS has also violated Section 201(b) by improperly manipulating its CEA rates, as explained in greater detail below, in AT&T's Legal Analysis (Part IV) and in Mr. Rhinehart's declaration. Based on these violations, the Commission should conduct a detailed review of INS's CEA rates in order to determine (i) a reasonable rate on a going forward basis and (ii) whether INS engaged in "furtive concealment" of violations of the Commission's rules by using improper accounting methods, thus allowing access customers to pursue refunds. AT&T Legal Analysis, Part IV; *see ACS*, 290 F.3d at 413.

119. As noted above, INS was founded in 1988 by a group of small, rural Iowa ILECs for the purpose of providing CEA service. *See supra* Sections I.A and I.B. Rather than provide that service from a single entity that owned both the equal access switching capability (the access tandem) as well as the transmission facilities (the fiber network), two separate operating divisions were established: the Access Division and the Carrier Division.[100] The Access Division would provide, pursuant to tariff, CEA service; the Carrier Division would provide competitive services

[100] *See Alpine* ¶ 7, n.19 (also identifying a third division, "netINS," that provides Internet service). All of the INS divisions are part of the same legal entity, *id.*, and the Commission did not find the different divisions to have legal relevance in the *Alpine* matter, *id.* ¶ 26, n.96.

such as long distance service.[101] Further, the fiber network would be owned by a separate entity (i.e., the "Network Division") which would lease capacity on that network to the Access Division for use in providing CEA service.[102]

120. While AT&T is not challenging the legality of that structure, it does create the potential for unreasonable conduct that violates Section 201(b), including the possibility that CEA service can be used to cross-subsidize the non-CEA services being provided by INS's other divisions. 47 U.S.C. § 201(b); *see also id.* § 254(k). Indeed, concerns about unreasonable cross-subsidization were first raised during the initial approvals of CEA service. *See Indiana Switch CCB Order* ¶ 22; *see also INS Order* ¶ 24. Both AT&T and MCI alleged that the corporate structure employed by CEA providers presented "the opportunity to cross-subsidize" via the separate operating divisions. *Indiana Switch CCB Order* ¶ 22.

121. Rather than address such claims in Section 214 proceedings, however, the Commission concluded that allegations of unreasonable pricing and cost accounting and improper cross-subsidies would be handled in connection with subsequent tariff filings or via a complaint proceeding. *Id.* The Commission further specifically cautioned CEA providers that "no access tariff will be allowed to become effective which unreasonably discriminates or contains unjust or unreasonable terms and conditions. Pricing strategies or rates, cost support data, terms and conditions of the tariff submitted will be analyzed to ascertain the existence of any unreasonable discrimination or cross-subsidization." *Indiana Switch Review Order* ¶ 6.

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[101] *Id.*

[102] *Id.* Over time, the number of INS divisions has increased. According to INS's counsel, there are currently five divisions: "the Parent, Access, IX Network, Long Distance (Products), and Internet (NetINS) divisions." *See* Ex. 56, Letter from James U. Troup and Tony S. Lee (Counsel for INS) to Michael J. Hunseder and James F. Bendernagel (Counsel for AT&T) (dated March 10, 2017).

122. INS's CEA filings and its rates raise serious concerns that INS has engaged in improper cross-subsidization and has unreasonably manipulated its rates (including via improper accounting methods that have disguised its unreasonable practices and rates). *See* AT&T Legal Analysis, Part IV.

123. ***The High Level of INS's CEA rates.*** To begin with, INS's CEA rates have not declined significantly since they were put in place in 1989, notwithstanding a general trend in the telecommunications industry that has seen other rates (including switched access rates) decline precipitously in the period 1989 to the present. *See* AT&T Legal Analysis, Part IV.A; *see also* Rhinehart Decl. ¶¶ 3, 7–8. INS's initially approved CEA rate in 1989 was $0.0117 per minute;[103] its current rate is $0.00896 per minute – a decline of slightly less than three tenths of a cent. Rhinehart Decl., ¶¶ 3, 7.[104] By contrast, during the period 1989 to 2010, the national average traffic sensitive interstate switched access charge per minute went from $0.030 per access minute (April 1989) to $0.0064 (2010),[105] and that average rate has continued to decline. *See id.* ¶ 8. As discussed in Mr. Rhinehart's declaration, the current level of INS's CEA rate is difficult to reconcile with the following facts: (a) INS's switching investment is largely depreciated, (b) its traffic volumes have grown significantly and (c) it has made major investments in upgrading its fiber network which should have produced cost efficiencies. *See id.* ¶¶ 9–10. Further, INS's most recent Tariff Filings demonstrate that its current rate is excessive (*see id.* ¶¶ 11–12) as does evidence showing that decreases in INS's non-CEA rates have been much greater than the declines in its CEA rates. *See id.* ¶ 13.

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[103] *See In re Iowa Access Div. Tariff FCC No. 1*, 4 FCC Rcd. 3947, ¶ 94 (C.C.B. Apr. 28, 1989).

[104] The situation with respect to INS's intrastate CEA rate is even worse. Not only is it significantly higher than INS's interstate CEA rate, it does not appear to have been revised since the early 1990s.

[105] See Ex. 57, FCC, *Trends in Telephone Service*, Table 1.2 (W.C.B. Sept. 2010), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

124. ***Handling of Fiber Network Investment.*** Another area of concern is the way in which investment in INS's fiber network is handled. *See* AT&T Legal Analysis, Part IV.B; Rhinehart Decl. ¶¶ 14–17. In a number of its Tariff Filings, INS has trumpeted the substantial investments it has made in its network, including its fiber network.[106] According to INS's Tariff Filings, however, none of the investment in INS's fiber network was recorded on the Access Division's books.[107] Instead, the Access Division appears to lease fiber capacity from INS's Network Division at a rate and rate of return that are not disclosed in INS's Tariff Filings or in the support data that INS has provided as part of the informal discovery process. Rhinehart Decl. ¶ 14. Moreover, the evidence that has been made available strongly suggests that the rates that INS has been charged for network capacity have been excessive. *Id*. ¶¶ 16-17. Obviously, to the extent that the Access Division has overpaid for network capacity, INS's CEA rates will be overstated. *See* AT&T Legal Analysis, Part IV.B.

125. ***Allocation of Cable & Wire Facilities Costs.*** A related area of concern pertains to INS's allocation of the operating costs, particularly the costs associated with operating and maintaining INS's fiber network, which appears from INS's Tariff filings to be accounted for as being 100 percent owned by INS's Network Division. *See* AT&T Legal Analysis, Part IV.C; Rhinehart Decl. ¶¶ 18–19.

126. As shown in Mr. Rhinehart's declaration, the Access Division's allocated share of the costs of "Cable & Wire Facilities" went from about 45 percent during 2004-2008 to above 70 percent in 2013-2017. *See* Rhinehart Decl. ¶¶ 18, Table C. Further, between 2004 and 2017, the

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[106] *See* Ex. 18, INS 2010 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring new technologies and increased capacity . . . . Approximately $20 million has been expended since 2006 and an additional $4.5 million is planned for 2010"); Ex. 19, INS 2012 Tariff Filing, at 2; Ex. 20, INS 2013 Tariff Filing, at 2.

[107] *See* Exs. 15–22. Section 5, Part 64 Separations, Schedule S-2, Lines 3 (Central Office Transmission Equipment) and 4 (Cable and Wire Facilities) of INS's Tariff Filings indicate that no investment in these accounts were assigned to the Access Division.

amounts for Cable & Wire Facilities allocated to INS's other divisions declined from about $14 million in 2004 to about $5 million in 2017. *Id.* ¶ 19. No explanation is provided in INS's Tariff Filings for these changes, nor is the manner in which these costs were allocated discussed. To the extent that Cable & Wire Facilities costs are being over-allocated to INS's Access Division, INS's CEA rates are overstated. *See* AT&T Legal Analysis, Part IV.C; Rhinehart Decl. ¶ 19.

127. ***Calculation of Lease Costs.*** Another area of concern involves the calculation of the lease costs allocated by INS to the Access Division. *See* AT&T Legal Analysis Part. IV.D; Rhinehart Decl. ¶¶ 20–27. The basis for this calculation is not explained either in INS's Tariff Filings or in the back-up support that has been produced as part of the informal discovery process. *See id.* ¶ 20. Moreover, a review of the cost information that INS has produced raises serious questions as to the reasonableness of INS's calculation and allocation of those costs to the Access Division. *Id.* ¶¶ 21–23. As explained in greater detail in Mr. Rhinehart's declaration, INS's projections of the leases costs to be allocated to the Access Division have varied widely from year to year. *Id.* ¶ 22, Table D. Further, those forecasts, as well as the other cost information examined by Mr. Rhinehart, strongly suggest that the Access Division may be cross-subsidizing the services of INS's other divisions. *Id.* ¶¶ 22–27, Tables C, E, and F.

128. ***Allocation of Costs Between Interstate and Intrastate Traffic.*** An additional concern regarding INS's rates relates to INS's allocation of costs between interstate and intrastate traffic, as well as its handling of the Percentage Interstate Use or "PIU" factor, which is used to separate interstate from intrastate traffic. *See* AT&T Legal Analysis, Part IV.E; Rhinehart Decl. ¶¶ 28–33. In its 2008 Tariff Filing, INS indicated that it had made adjustments to its PIU factor to "more accurately classif[y] the jurisdiction of . . . call aggregator traffic." *See* Ex. 17, INS 2008 Tariff Filing, at 1–2. As INS further explained, this change resulted in the PIU factor for calls associated with call aggregation increasing from 48 percent to 78 percent. *Id.* at 3–4. In other

words, an additional 30 percent of the call aggregation traffic was assigned to the interstate jurisdiction.

129. In making this change, INS did not bring to the Commission's attention that this change would have a dramatic impact on the assumption underlying the Commission's initial approval of CEA service in Iowa that "the majority of the network's costs [would] be recovered from intraLATA toll calls." *INS Order* ¶ 32; *see also* Rhinehart Decl. ¶ 31. As explained in Mr. Rhinehart's declaration, the percentage of costs allocated to interstate long distance calls increased from about 40 percent in 2004 to in excess of 90 percent in 2016. *See* Rhinehart Decl. ¶ 29, Table G; *see also* AT&T Legal Analysis, Part IV.E. In short, because of INS's decision to engage in access stimulation, which involves almost entirely interstate calls, INS has shifted the costs of CEA service to interstate ratepayers. *See Connect America Order* ¶ 663.

130. In addition, questions exist as to the accuracy of INS's assumption that 78 percent of the access stimulation calls are interstate in nature.[108] If, in fact, a significantly larger percentage of those calls were interstate (say 98 percent), INS's interstate CEA rate for that test period would necessarily be lower, assuming all other factors remained the same. *See* AT&T Legal Analysis, Part IV.E; Rhinehart Decl. ¶ 33.[109] Lastly, the fact that there is a significant difference in the levels of INS's interstate and intrastate CEA rates also makes it imperative that the PIU factor, and the allocation of costs between interstate and intrastate traffic, be accurate. *See id.*

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[108] *See* Ex. 17, INS 2008 Tariff Filing, at 2 (indicating that for the 2009 test period, INS was projecting "1.6 billion terminating conference call minutes generated by call aggregators," of which 78% were rated as interstate).

[109] In prior filings with the Commission, Iowa carriers engaged in access stimulation have asserted that about 96 to 99 percent of the traffic was interstate in nature. *See, e.g.*, Ex. 58, Petition for Declaratory Ruling to the Iowa Utilities Board and Contingent Petition for Preemption, *In re Petition for Declaratory Ruling to the Iowa Utilities Board and Contingent Petition for Preemption*, WC Docket No. 09-152, at 20–29 (filed Aug. 14, 2009).

131. ***INS's Traffic Forecasts.*** A further area of concern relates to the reliability of the traffic forecasts used by INS in developing its CEA rates. *See* AT&T Legal Analysis, Part V.F; Rhinehart Decl. ¶¶ 34–37. As explained by Mr. Rhinehart in his declaration, these forecasts not only vary from year to year but have not proven to be very accurate when compared to INS's actual reported demand. *See* Rhinehart Decl. ¶ 35, Table H. Indeed, for most years, the forecasts understated demand, thereby inflating INS's CEA rates and resulting in INS's exceeding its allowed rate of return in certain years. *Id.* ¶ 36.

132. ***Inclusion of "Uncollectible Revenues."*** Finally, INS appears to have inflated its rates by the inclusion of "Uncollectible Revenues" that were not "properly billed" and that INS is still endeavoring to collect. *See* AT&T Legal Analysis, Part IV.G; *see also* Rhinehart Decl. ¶¶ 38–43. This practice appears to have started with INS's 2010 Tariff Filing, wherein INS stated that in 2007, it "began to experience an increase in its uncollectible revenues from an [IXC] as a result of billing disputes over the classification and quantification of interstate access minutes related to traffic terminated by the IXC to ILEC customer locations in Iowa."[110] While the specific IXC was not identified, it appears to be Sprint, which is involved in a lawsuit with INS that was filed in 2010 in Iowa federal district court, and in which INS is seeking to collect unpaid tariff charges.[111] Rather than wait for that lawsuit to be resolved, INS appears to have simply included the amount of $2,893,575 in its 2010 Tariff Filing, thereby inflating its rate requirement as well as its rates.[112] Worse yet, by seeking to recover those amounts through its rates, INS was effectively requiring its other CEA customers (including AT&T) to pay for service that it allegedly provided to Sprint. Rhinehart Decl. ¶ 38.

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[110] *See* Ex. 18, INS 2010 Tariff Filing, at 2.

[111] *See e.g., Iowa Network Servs. v. Sprint Commc'ns Co., et al.,* No. 4:10-CV-102 (S.D. Iowa).

[112] *See* Ex. 18, INS 2010 Tariff Filing, at 2.

133. As Mr. Rhinehart's declaration shows, during the period 2010 to 2016, INS included in its revenue requirement calculations almost $30 million in so-called "Uncollectible Revenues." *Id.* ¶ 39, Table I. Mr. Rhinehart further shows that the inclusion of these amounts in INS's revenue requirement had a potential rate impact of between 0.074 cents per minute and 0.659 cents per minute. *Id.* ¶¶ 41–42, Table J. All of these amounts are still the subject of rate collection actions, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Consequently, INS's treatment of these "Uncollectible Revenues" as an expense that its ratepayers must bear has no justification, and has obviously inflated INS's rates. *See* AT&T Legal Analysis, Part IV.E.[114]

COUNT I

(Section 201, 47 U.S.C. § 201,
Unjust and Unreasonable Practice)

134. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 to 133 of this Formal Complaint as if set forth fully herein.

135. Under Section 201(b) of the Act, "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service, shall be just

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[113] *See* Rhinehart Decl. ¶ 42; *see also* Ex. 59, Letter from James U. Troup and Tony S. Lee (Counsel for INS) to Michael J. Hunseder and James F. Bendernagel (Counsel for AT&T), at 2 (dated Mar. 23, 2017) **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[114] The inclusion of these "Uncollectible Revenues" in INS's revenue requirement largely explains the so-called "negative" rates of return that INS has reported in its recent Tariff Filings. *See* Rhinehart Decl. ¶ 43. If these "Uncollectible Revenues" are excluded from INS's revenue requirement, these negative returns are either eliminated or significantly reduced. *Id.* Take, for example, INS's most recent Tariff Filing. It reported a rate of return of -171.69% on a revenue requirement of $33,407,808. *See* Ex. 22, INS 2016 Tariff Filing, at 2, 4–5. If, however, the "Uncollectible Revenues" are excluded from INS's revenue requirement, the projected revenues of $22,496,381 exceed the resulting revenue requirement by about $5.6 million resulting in a positive return. *See* Rhinehart Decl. ¶ 43.

and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b).

136. INS's imposition of its tariffed CEA rates on AT&T for calls directed to CLECs engaged in access stimulation is unjust and unreasonable, and thus unlawful, in the following ways.

137. *First*, INS's billing of CEA rates in connection with access stimulation traffic is not consistent with the terms of INS's tariff and is unreasonable under Section 201(b). INS's tariff applies only to its provision of "Centralized Equal Access Service," a term that is not defined in the tariff, but is described in a number of Commission decisions. Those decisions make clear that CEA service, including the CEA service encompassed by INS's tariff, was designed, created and approved to facilitate the roll out of equal access service in areas served by small, rural LECs with very low traffic volumes. Access stimulation, and the access stimulating CLECs that engage in that practice, bear no resemblance to the services and LECs for which CEA service was approved. Further, until very recently INS no effort to file a new tariff that applied to access stimulation traffic, and it has never properly conformed its CEA tariff to encompass access stimulation traffic. As such, it was unreasonable, under Section 201(b), for INS to have billed AT&T for CEA service under a CEA tariff that is inapplicable to access stimulation traffic. See *supra* Section II.A.I; *see also* AT&T Legal Analysis, Part I.A.

138. *Second*, INS's billing of CEA rates for access stimulation traffic is not economically justifiable and is thus unreasonable under Section 201(b). Other methods of terminating the calls at issue, such as a direct connection or a contractual direct switching and transport arrangement, exist and are significantly more efficient. *See supra* Section II.A.2. Moreover, the purported benefits of CEA service do not apply to access stimulation. *See* AT&T Legal Analysis, Parts I.A.2 and I.B. Indeed, INS's CEA rates dramatically *increase* AT&T's costs in direct contravention of the purpose for which INS's CEA service was approved, *i.e.*, "to *lower*

the cost of transporting traffic from [INS's tandem] to the various remote rural exchanges." *Alpine* ¶ 29 (emphasis in original).

139. *Third*, [[**BEGIN CONFIDENTIAL]]** [redacted] [[**END CONFIDENTIAL**]] is not consistent with the FCC's procompetitive policies and is, in fact, anticompetitive and unreasonable under Section 201(b). Under the Commission's rules, IXCs are obligated to complete calls to access stimulating CLECs, and INS's traffic agreements with those CLECs thus sought to exploit the "bottleneck monopoly" that arises because of the Commission's rules. INS's traffic agreements further limit or even eliminate potential competition, to the detriment of AT&T, other IXCs and their respective customers. *See supra* Section II.B; *see also* AT&T Legal Analysis, Part I.B.

140. *Fourth*, INS has violated the Commission's rate cap and rate parity regulations, which is unreasonable under Section 201(b). Pursuant to the *Connect America Order* and 47 C.F.R. §§ 51.901 and 51.905, all LECs were: (i) required to cap their access rates at the levels they were at on the effective date of the rules, December 29, 2011; (ii) prohibited from tariffing any rates for access above the applicable caps; and (iii) directed to reduce their intrastate rates to parity with their capped interstate rates. *See supra* Section III; *see also* AT&T Legal Analysis, Part II. As explained above, INS is in violation those regulations. See *supra* Section III.C.

141. *Fifth*, INS has violated the Commission's access stimulation rules, which is unreasonable under Section 201(b). Under the *Connect America Order* and the Commission's implementing rules, carriers engaged in access stimulation must file revised tariffs that comply with the Commission's regulations, including reducing their rates for terminating switched access to a level no higher than the rates of the lowest price cap ILEC in Iowa, which is CenturyLink. *See supra* Section IV; *see also* AT&T Legal Analysis, Part III.

142. As explained above, INS's ratio of terminating to originating traffic, which is at least 11:1, establishes that INS is presumptively engaged in access stimulation. *See supra* Section IV.A. Further, its traffic agreements **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** in Iowa meet the Commission's definition of a revenue sharing agreement. Moreover, even if INS were somehow outside the broad confines of the Commission's access stimulation rules, INS's conduct would still be unreasonable under Section 201(b) because INS's agreement to become involved in the access stimulation schemes had the effect of unreasonably raising the rates applicable to the transport of traffic, which would not have occurred if the traffic had been transported directly by the access stimulating CLECs (or by CenturyLink). *See* AT&T Legal Analysis, Part III.C.

143. Because INS is subject to the Commission's access stimulation rules, it was obligated to file a revised tariff to comport with the Commission's access stimulation rules. It did not do so. As explained above, INS's rates do not match the rates of the functionally equivalent service that would be offered by CenturyLink. *See supra* Section IV.C. INS has therefore violated the Commission's regulations governing CLECs engaged in access stimulation.

144. *Sixth*, INS has improperly manipulated its rates, in violation of Section 201(b). *See supra* Section V; *see also* AT&T Legal Analysis, Part IV. As noted above, INS's CEA rates have not declined significantly since they were put in place in 1989, notwithstanding a general trend in the telecommunications industry that has seen all rates (including switched access rates) decline precipitously since 1989. *See supra* Section V; *see also* AT&T Legal Analysis, Part IV.A. Further, a number of INS's rate practices raise serious questions as to whether INS properly accounted for its costs and expenses, and thus whether INS's CEA rates are unreasonable due to improper accounting practices that INS has not properly disclosed. *See* AT&T Legal Analysis, Part IV.B to IV.G.

145. For the foregoing reasons, INS's practices and rates are unjust and unreasonable in violation of Section 201(b) of the Act.

146. As a direct and proximate result of INS's violations of the Act, AT&T has been and is currently being unjustly and unreasonably billed INS's CEA rates on calls bound for CLECs engaged in access stimulation, has no obligation to pay such bills, and is entitled to refunds for any amounts paid pursuant to improper bills.

COUNT II

(Section 203, 47 U.S.C. § 203(a) & (c))

147. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 to 146 of this Formal Complaint as if set forth fully herein.

148. Section 203(a) of the Act states that "[e]very common carrier . . . shall . . . file with the Commission . . . schedules showing all charges . . . for interstate and foreign wire or radio communication[s] . . . and showing the classifications, practices, and regulations affecting such charges." 47 U.S.C. § 203(a). Section 203(c) also provides that "[n]o carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication[s] unless schedules have been filed and published in accordance with the provisions of this chapter . . . ; and no carrier shall . . . employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule." 47 U.S.C. § 203(c).

149. INS has violated its obligation under the Act to file lawful, valid tariffs for its services, and to provide service in accordance with those lawful, valid tariffs, in several respects.

150. *First*, INS's tariff encompasses only CEA service, and under established principles of tariff interpretation, INS may only bill charges under that tariff when it is engaged in the provision of CEA service. As to the many millions of minutes of traffic where INS transported

access stimulation traffic to CLECs, INS did not provide CEA services, and could not properly bill AT&T its CEA rate. CEA service was authorized to facilitate the rollout of equal access service to long distance subscribers served by dispersed small, rural Iowa LECs handling very low volumes of traffic. Access stimulation traffic, by contrast, involves delivering very large volumes of traffic to a limited number of high capacity telephone lines which have been assigned FCPs that have nothing in common with the rural residential and business customers for which CEA was developed. Because of the substantial differences between access stimulation traffic and legitimate CEA traffic, INS's CEA tariff is inapplicable to the access services INS provided on access stimulation traffic. When INS began billing AT&T its CEA rates for access stimulation traffic without a valid tariff applicable to such traffic, INS violated Sections 203(a) and (c). *See supra* Section II.A.1; *see also* AT&T Legal Analysis, Part I.A.

151. *Second*, as explained above, INS's interstate CEA tariff is unlawful and invalid because its rates exceed the rate caps imposed by the Commission's regulations. *See supra* Section III; *see also* 47 C.F.R. §§ 51.901 and 51.905. INS has also violated the Commission's parity rules directing that a carrier's intrastate access rates must not exceed its interstate access rates. *See supra* Section III; *see also* AT&T Legal Analysis, Part I.A. Under the Commission's rules, INS was prohibited from filing any tariffs with rates above the rate caps. As such, the tariffs that INS did file, with rates above the cap, were not lawful and were rendered void *ab initio*. INS was also required to file revised intrastate tariffs, and its failure to do so violates the Commission's rate parity rules and Section 203 Accordingly, INS has billed AT&T interstate and intrastate CEA rates pursuant to invalid and unlawful tariffs.

152. *Third*, INS is engaged in access stimulation, and therefore is subject to the Commission's rules governing access stimulation. *See supra* Section III. Under those rules, INS is a CLEC, and therefore was obligated to file a revised tariff with rates that did not exceed the

rates of the lowest price cap ILEC in Iowa, which is CenturyLink. INS never filed such a revised tariff. Accordingly, INS has billed AT&T CEA rates pursuant to an invalid and unlawful tariff. *See supra* Section IV; *see also* AT&T Legal Analysis, Part III.

153. For the foregoing reasons, INS has billed AT&T CEA charges pursuant to an invalid and unlawful tariff in violation of Section 203.

154. As a direct and proximate result of INS's violations of the Act, AT&T has been and is currently being improperly billed INS's CEA rates on calls bound for CLECs engaged in access stimulation, and has no obligation to pay such bills, and is entitled to refunds for any amounts it paid pursuant to improper bills.

PRAYER FOR RELIEF

155. Wherefore, and pursuant to Section 1.721(a)(7) of the Commission's rules, 47 C.F.R. § 1.721(a)(7), Complainant AT&T requests that the Commission:

(a) find that Defendant INS has violated Section 201(b) of the Act, 47 U.S.C. § 201(b), by (i) billing AT&T tariffed CEA rates in violation of the terms of its tariff; (ii) charging AT&T excessive rates for terminating its long distance traffic; (iii) entering into anticompetitive traffic agreements with access stimulating CLECs; (iv) filing tariffs with access rates that violate the Commission's rate cap and rate parity regulations, and billing AT&T pursuant to such tariffs; (v) violating the Commission's access stimulation rules by failing to file a revised tariff with rates that match the rates of CenturyLink, the lowest price cap LEC in Iowa; and (vi) manipulating its CEA rates to the detriment of AT&T and other IXCs;

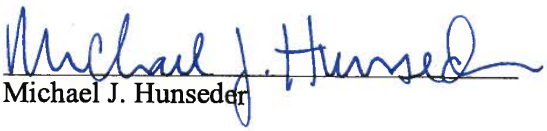
(b) find that INS has violated Sections 203(a) and 203(c) of the Act, 47 U.S.C. §§ 203(a) and 203(c), by billing AT&T pursuant to unlawful and invalid tariffs in the following respects: (i) charging AT&T for CEA service in violation of the

terms of its tariff and without obtaining appropriate authorization to impose its tariffed CEA rates on access stimulation traffic; (ii) having tariffs with access rates that violate the Commission's rate caps and rate parity regulations; and (iii) failing to revise its tariffs pursuant to the Commission's access stimulation rules;

(c) find that (i) AT&T is not liable for the CEA rates that INS has billed AT&T on access stimulation traffic; and (ii) INS must refund amounts it improperly billed to AT&T, and which AT&T paid, in amounts to be determined in a subsequent proceeding; and

(d) conduct a detailed review of INS's CEA rates in order to determine (i) a reasonable rate on a going forward basis; and (ii) whether INS engaged in "furtive concealment" of violations of the Commission's rules by using improper accounting methods, thus allowing access customers to pursue refunds.

Respectfully submitted,



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Dated: June 8, 2017

Counsel for AT&T Corp.

CERTIFICATE OF FEE PAYMENT

I hereby declare under penalty of perjury that (1) AT&T paid the $230 filing fee for the Formal Complaint (pursuant to Commission Rule 1.1106, 47 C.F.R. § 1.1106) by means of a wire transfer by Spencer Driscoll of Sidley Austin LLP, and submitted simultaneously with the Formal Complaint, and (2) AT&T Corp.'s FRN is 0005937974.

Respectfully submitted,

Michael J. Hunseder

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2017, I caused a copy of the foregoing Formal Complaint, as well as all accompanying materials, to be served as indicated below to the following:

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Market Disputes and Resolution Division
Federal Communications Commission
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(Original of the Public Version, the Confidential Version, the Highly Confidential Version, and the Third Party Highly Confidential Version via Hand Delivery)

Lisa Griffin
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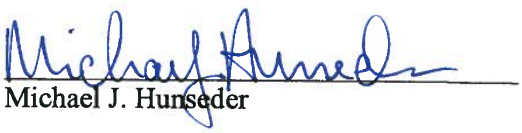
Respectfully submitted,



Michael J. Hunseder

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(202) 457-3090** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

AT&T CORP.'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

AT&T Corp. ("AT&T") respectfully submits the following proposed findings of fact and conclusions of law. Herein, AT&T sets forth the primary facts and major conclusions of law in support of its Formal Complaint. The complete set of facts and conclusions of law upon which AT&T relies in this proceeding is set forth in its Formal Complaint, Legal Analysis, supporting Declarations and attached Exhibits, and AT&T reserves all rights to supplement and to amend the proposed findings of fact and conclusions of law contained herein.

PROPOSED FINDINGS OF FACT

Parties and Relevant Non-Parties

1. Complainant AT&T is a New York corporation that provides communications services, including interexchange services, and has its principal place of business in Bedminster, New Jersey.

2. With regard to the dispute set forth in the Formal Complaint, AT&T functions as a purchaser of telecommunications services, not as a common carrier.

3. Defendant Iowa Network Services, Inc. d/b/a Aureon Network Services ("INS") is an Iowa corporation and has its principal place of business in West Des Moines, Iowa.

4. With regard to the dispute set forth in the Formal Complaint, INS functions as a common carrier, and specifically as a local exchange carrier ("LEC").

5. The following carriers are competitive LECs ("CLECs") engaged in access stimulation in Iowa that connect to long distance carriers, also called interexchange carriers ("IXCs"), through INS: Great Lakes Communications Corp. ("Great Lakes"); Omnitel Communications; BTC, Inc.; Louisa Communications; Premier Communications; Goldfield Access Network, LLC; and Interstate Cablevision.

6. Qwest Corp. d/b/a CenturyLink QC ("CenturyLink") is an incumbent LEC ("ILEC"), successor to the regional Bell Operating System Company ("BOC") in Iowa and the lowest price-cap LEC in Iowa.

CEA Service

7. CEA service was developed in the mid-1980s to facilitate the roll-out of equal access service following AT&T's divestiture of the BOCs in January 1984.

8. A critical feature of equal access service is "1+" dialing on originating long distance calls; 1+ dialing automatically directs all long distance numbers to the customer's chosen (or "presubscribed") long distance carrier.

9. Equal access concerns the ability to place calls, not to receive them, and therefore is, by its very nature, an originating service.

10. In the 1980s, many switches of small, rural ILECs did not have the capability of providing service to more than one long distance carrier on a 1+ basis, and many such ILECs claimed they lacked the financial wherewithal to upgrade or to replace their existing switches.

11. In a number of states with numerous small, rural ILECs, it was believed that new IXCs would not be willing to incur the costs to construct the facilities needed to interconnect their long distance networks directly to the end office switches of the many rural ILECs; the cost of constructing such facilities was believed to be high, and the volume of potential traffic from each individual rural ILEC was very small.

12. In some states, groups of small, rural ILECs sought to address the problems associated with the roll-out of equal access by forming entities – CEA providers – to provide CEA service.

13. CEA service was designed to achieve two main objectives: (a) to "centralize" the equal access function at a tandem switch, thereby sparing the small, rural ILECs the direct costs of converting their switches to equal access; and (b) to permit the aggregation of traffic from scores of small, rural ILECs at the CEA tandem switch via a fiber network, thereby providing a more efficient means of transporting small volumes of traffic between each IXC and each of the many small, rural ILECs.

The Expansion of INS's Business and Services

14. INS was founded in 1988 by a group of small, rural ILECs (also referenced as Independent Telephone Companies or "ITCs") for the purpose of providing CEA service.

15. At the outset, INS had about 136 participating ILECs, and provided only CEA service (through its Access Division) and long distance services (through its Iowa Network Interexchange Carrier Division ("Carrier Division" or "INICD")).

16. Since its founding, INS's business has expanded well beyond CEA service. Today, INS (as Aureon) provides an array of services on a competitive basis: (a) voice services (VoIP, IP Fax, hosted PBX); (b) dedicated Internet access; (c) cloud and data storage; (d) IT support (technology planning, help desk, disaster recovery, IT security); (e) human resources (administrative services, staffing, leadership development, senior living services); and (f) call centers.

17. In or about 2005, INS began to transport access stimulation traffic.

18. INS's decision to carry large volumes of access stimulation traffic resulted in increased minutes of use ("MOUs") and revenues for INS; more specifically, INS's annual throughput and revenue increased from 950 million MOUs and $10 million in revenue in 2005, to 2.2 billion MOUs and $20 million in revenue in 2015.

19. INS has attributed substantially all of the growth in MOUs and revenues to "call aggregation," which is access stimulation traffic.

20. INS's MOUs and revenues have decreased since 2011, and INS has attributed the decreases to significant declines in INS's non-access stimulation traffic.

21. INS has used these increased revenues to expand and improve its fiber network, to expand its business, and to subsidize its competitive services.

22. In 2004, INS began to provide "direct interconnections" to several wireless carriers which, according to INS's 2004 Tariff Filing, "remove[d] interstate traffic from the network and replace[d] it with interconnection traffic to be billed in accordance with interconnection agreements."

23. INS has offered other network services over its fiber network, including various backhaul services for wireless carriers, as well as the leasing of DS-3 fiber capacity to ILECs and other carriers.

24. INS currently offers a wide range of competitive network services over a fiber network that INS funded and initially built to provide CEA service, including network transport, data network services, Internet services, and wholesale voice services.

Nature and Growth of Access Stimulation

25. Because access rates are generally higher in rural areas, most access stimulation schemes have occurred in states, like Iowa, that have a large number of rural LECs that charge relatively high rates for access service.

26. To take advantage of those high rates, CLECs engaged in access stimulation have historically located their operations in jurisdictions where they could benchmark their rates to the high rates of rural ILECs.

27. Typically, these CLECs would not compete with those ILECs for local telecommunications business; instead, they would partner with chat and conferencing companies, also known as "free calling parties" or "FCPs," to artificially drive traffic to the FCPs' chat and conferencing equipment, thereby generating high access revenues that were then shared with the FCPs.

28. On account of CLECs having "bottleneck monopolies" on calls placed to their customers, combined with Commission rules against IXCs blocking such calls, once a CLEC decides to engage in access stimulation and designates how access stimulation is to be routed to its end office switch, the IXCs are billed access charges on that route, regardless of whether that particular route is efficient or cost-effective.

29. CLECs engaged in access stimulation have obvious incentives to increase the access revenues available to be shared by the participants in the access stimulation scheme.

30. Consistent with those incentives, CLEC access stimulation schemes have grown rapidly since 2005.

31. In its 2011 *Connect America Fund Order*, 26 FCC Rcd 17663 (2011) ("*Connect America Order*"), the Commission adopted reforms meant to "curtail" access stimulation. However, since that time, access stimulation has continued to flourish in Iowa and certain other states.

32. In Iowa, for access stimulation schemes to work when they were first implemented in 2005, it was imperative that the access stimulating CLECs enter into agreements with INS to transport their traffic from Des Moines to the local areas where these CLECs were operating.

33. The reason these CLECs needed INS's terminating transport service was not to provide equal access service to local residential and business customers, but because without it they could not engage in access stimulation.

34. Starting in or around 2005, INS agreed to enter into contracts, typically called "Traffic Agreements," with CLECs pursuant to which access stimulation traffic would be transported over its network and billed at CEA rates.

35. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

36. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

37. By entering into those Traffic Agreements, INS has greatly facilitated the growth of access stimulation in Iowa.

38. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** INS has improperly colluded with the access stimulating CLECs, depriving AT&T and other IXCs of more cost-effective transport alternatives.

Facts Related to INS's Unlawful Imposition of CEA Rates on Access Stimulation Traffic

39. Since January 2013, INS has billed AT&T at its tariffed CEA rates for over 4 billion MOUs of traffic bound for Great Lakes and other access stimulating CLECs.

40. The INS tariff at issue in this proceeding (Tariff F.C.C. No. 1) is titled "Centralized Equal Access Service" and it sets forth the "Regulations, Rates and Charges applying to *the Provision of Centralized Equal Access Service* within the certificated operating territory of Iowa Network Access Division in the State of Iowa."

41. The phrase "Centralized Equal Access Service" is capitalized throughout INS's tariff, but the tariff does not include a definition for that term.

42. INS's tariff states only that it applies to "Centralized Equal Access Service," and not to other types of access services, like those provided on the access stimulation traffic at issue.

43. Except for recent tariff filings, in which INS initially proposed a contract tariff ("High-Volume Traffic Contract No. 1") for delivery of calls to access stimulating CLECs and now has shifted to a "volume discount" for such traffic, INS has not filed a new tariff, or revised its CEA tariff, to cover delivery of calls to access stimulating CLECs.

44. INS has not negotiated an agreement with AT&T as to access service INS provided for access stimulation traffic.

45. Substantially all of the access stimulation traffic at issue is terminating, not originating traffic.

46. Nearly all of the access stimulation traffic consists of terminating interstate calls, not intrastate calls.

47. Terminating transport service is not a necessary component of CEA service.

48. The services provided by FCPs associated with the access stimulating CLECs that connect to IXCs via INS almost exclusively entail the IXC's long distance customers placing calls to the FCPs' conference and chat equipment located at the access stimulating CLEC's central office.

49. Consequently, FCPs have no need to place any long distance calls, and thus no need for equal access service.

50. The volume and nature of legitimate CEA traffic differs markedly from access stimulation traffic.

51. Legitimate CEA traffic involves: very low volumes of traffic routed to a large number of small rural LECs, a roughly balanced mix of originating and terminating traffic; and a roughly balanced mix of interstate and intrastate traffic. Further, the calls are directed to, or originate from, ordinary rural residential and business customers.

52. By contrast, INS's access stimulation traffic involves: massive calling volumes that are transported to a small handful of CLECs using a limited number of high capacity telephone lines assigned to FCPs that have nothing in common with ordinary rural residential and business customers; almost entirely terminating calls; and almost entirely interstate calls.

53. The high-volume service described in INS's initially proposed High-Volume Traffic Contract No.1 was offered at a lower rate ($0.00649 per minute), and a prerequisite to

receiving that service was that the customer must sign a separate contract with INS and must agree not to challenge any of INS's rates.

54. The initially proposed High-Volume Traffic Contract No. 1 also stated that the high-volume service would be "provided subject to additional terms and conditions that are not applicable to centralized equal access service" and thus is "not like centralized equal access service."

55. INS's revised proposed offer for a "volume" discount has the same rate ($0.00649) as the proposed contract service and also requires execution of a separate service agreement.

56. CEA service was not designed for and was not intended for use with access stimulation traffic.

57. More efficient alternatives to INS's CEA service exist for delivering the large volumes of traffic associate with access stimulation.

58. One such alternative is a direct trunking arrangement from the IXC to the access stimulating CLEC's end office. Based on the volumes of AT&T traffic delivered to Great Lakes during 2014 and 2015, a direct trunking arrangement at the rates for such service charged by CenturyLink would save AT&T over **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** compared to INS's tariffed CEA rates.

59. A second alternative is a contract with INS for a service that delivers traffic to Great Lakes and other access stimulating CLECs. AT&T employs a similar arrangement with South Dakota Network, LLC ("SDN"), the CEA provider in South Dakota, with respect to traffic delivered to Northern Valley Communications Corp. ("NVC"), a major access stimulating CLEC. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

60. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

61. The actual cost of transporting access stimulation traffic is much lower than its tariffed CEA rate.

62. That low actual cost is demonstrated, among other things, by **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

63. INS's insistence on imposing a "mandatory use" requirement on calls to access stimulating CLECs has created a price umbrella that access stimulating CLECs have exploited. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

64. On account of their obligation to complete access stimulation calls, IXCs needing to deliver calls to an access stimulating CLEC in Iowa face two unfavorable choices: pay INS's tariffed CEA rate; or pay an unreasonable premium for a direct connect.

Facts Related to INS's Violation of the Commission's Access Stimulation, Rate Cap and Rate Parity Rules

65. INS provides exchange access service.

66. INS is a LEC, and has conceded that it is a LEC in other proceedings.

67. INS bills substantially more terminating access traffic than originating access traffic.

68. Since 2008, INS's ratio of terminating minutes to originating minutes has well exceeded 3:1 in every single year.

69. Without the INS traffic agreements, the access stimulation calls could not have been completed and, as a consequence, there would have been no revenue for the access stimulating CLECs to share with their FCP partners.

70. INS has financially benefited from the access stimulation traffic transported pursuant to these traffic agreements with access stimulation CLECs because the large increase in traffic on INS's network led to a large increase in the amount of access traffic for which INS has billed.

71. Nationwide, AT&T is currently billed for terminating switched access charges by approximately 1,300 LECs.

72. INS is responsible for over 12 percent of AT&T's total, nationwide billed terminating switched access expense.

73. INS is one of the nation's largest access stimulating LECs.

74. Following adoption of the Commission's access stimulation rules pursuant to the *Connect America Order*, INS did not amend its rates to reflect the fact that INS was engaged in access stimulation.

75. Following adoption of the Commission's rate cap rules pursuant to the *Connect America Order*, INS did not cap its rates.

76. As of December 29, 2011, when the Commission's rate cap went into effect, INS's interstate CEA rate was $0.00819 per minute.

77. In June 2012, INS filed a revised tariff that reduced its interstate CEA rate to $0.00623 per minute.

78. In June 2013, INS filed another revised tariff that raised its CEA rate to its current level of $0.00896 per minute. The $0.00896 per minute rate exceeds INS's $0.00819 per minute rate cap.

79. Following adoption of the Commission's rate parity rules pursuant to the *Connect America Order*, INS did not bring its intrastate CEA rates in line with its interstate rates.

80. INS's intrastate rates have at all relevant times been $0.0114 per minute for CEA switching services plus $0.0003 per minute, per mile for transport. Those rates exceed INS's capped interstate rate of $0.00819 per minute (which covers both CEA switching and transport), as well as the current tariffed rate of $0.00896.

81. After INS filed its revised interstate tariff with rates that exceeded INS's rate cap, AT&T disputed INS's billed access service charges pursuant to the billing dispute provisions in INS's tariff.

82. Beginning with INS's invoices dated September 2013, AT&T began withholding payment on some of the access charges improperly billed by INS.

83. The amounts of INS's invoices that AT&T has continued to pay are based on estimates of the amount of INS's traffic that is not access stimulation traffic; for that traffic, which includes both interstate and intrastate traffic, AT&T has paid INS at the rate of $0.00819.

Facts Related to INS's Improper and Unreasonable Rate Manipulation

84. Since its formation, INS has not provided service as a single entity that owned both the equal access switching capability (the access tandem) as well as the transmission facilities (the fiber network). Instead, INS established two separate operating divisions: the Access Division and the Carrier Division.

85. The Access Division provides, pursuant to tariff, CEA service; the Carrier Division provides competitive services such as long distance service.

86. The fiber network was, and is, owned by another division (i.e., the "Network Division"), which leased capacity on that network to the Access Division for use in providing CEA service.

87. INS's initially approved CEA rate in 1989 was $0.0117 per minute; its current rate is $0.00896 per minute – a decline of less than three tenths of a cent.

88. During the period from 1989 to 2010, the national average traffic sensitive interstate switched access charge per minute per minute went from $0.030 (April 1989) to $0.0064 (2010), and that average rate has continued to decline.

89. Decreases in INS's rates for services other than CEA have been much greater than the decline in its rate for CEA service.

90. In its tariff filings, INS has stated that it has made substantial investments in its network, including its fiber network.

91. Some portion of INS's investment in its fiber network has been funded by revenues derived from INS's CEA service.

92. In its tariff filings, INS has indicated that none of the investments in INS's network were recorded on the books of the Access Division. Instead, 100% of the investment was recorded on the books of the Network Division.

93. The Access Division's allocated share of the costs of "Cable and Wire Facilities" went from about 48 percent during the 2004-2008 period to above 70 percent during the 2013-2016 period.

94. Between 2004 and 2016, the amounts for Cable and Wire Facilities allocated to INS's other divisions declined from about $14 million in 2004 to about $5 million in 2016.

95. The basis for calculation of the lease costs allocated to INS's Access Division is not explained in either INS's Tariff Filings or in the support material produced as part of the informal discovery process.

96. In recent years, INS's investment has increased dramatically notwithstanding that the overall demand for INS's access service has been decreasing. Further, the network costs allocated to the Access Division have been increasing as a percentage of its revenue requirement even though the demand for access service has been declining.

97. In its 2008 Tariff Filing, INS stated that it had made adjustments to its Percentage of Interstate Use ("PIU") factor to "more accurately classif[y] the jurisdiction of … call aggregator traffic"; this change resulted in the PIU factor for calls associated with call aggregation increasing from 48 percent to 78 percent.

98. INS did not bring to the Commission's attention that this change to the PIU factor would have a dramatic impact on the assumption underlying the Commission's initial approval of CEA service in Iowa that "the majority of network costs would be recovered from intraLATA toll calls."

99. The percentage of INS's costs allocated to interstate long distance calls increased from about 40 percent in 2004 to in excess of 90 percent in 2017.

100. Because of INS's decision to engage in access stimulation, which involves almost entirely interstate calls, INS has shifted the costs of CEA service to interstate ratepayers.

101. The traffic forecasts used in INS's tariff filings vary widely from year to year and are not reliable when compared to actual demand for INS's access services.

102. In its 2010 tariff filing, INS stated that, in 2007, it "began to experience an increase in uncollectible revenues from an [IXC] as a result of billing disputes over the classification and quantification of interstate access minutes related to traffic terminated by the IXC to ILEC customer locations in Iowa."

103. Rather than wait for the dispute to be resolved, INS simply included the amount of $2,893,575 as an expense in connection with its 2010 tariff filing, which has the effect of increasing INS's revenue requirement and, by extension, its rates.

104. Going forward, INS included additional amounts of purported uncollectible revenues as an expense in future filings, such that, during the period from 2010 to 2016, INS included in its revenue requirement calculations a total of almost $30 million in so-called uncollectible revenues.

105. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Further, these amounts are all subject to litigation where it is asserted that the amounts were not properly billed.

106. Since it began the practice, INS's inclusion of the amounts for uncollectible revenues in INS's revenue requirement has had a potential rate impact of between 0.074 cents per minute and 0.68 cents per minute.

CONCLUSIONS OF LAW

1. An important reason supporting the Commission's approval of INS's application to provide CEA service in 1988 was the belief that, absent the INS network, IXCs seeking to compete would deem it too expense to provide their own facilities to each of these small exchanges, particularly given the low amount of interexchange traffic the small exchanges generate.

2. CEA service was intended to lower the cost of transporting traffic from the INS tandem switch to the various remote rural exchanges of the INS member ILECs.

3. Authorizing INS's CEA service did not grant "unbounded authority" to LECs subtending INS's network or to INS to select points of interconnection with IXCs.

4. Terminating traffic is not an essential element of CEA service.

5. Allowing IXCs to use all available options to terminate their traffic to LECs subtending a CEA network enhances the overall efficiency of long distance service.

6. Access stimulation is a "wasteful arbitrage scheme" with many "adverse effects."

7. IXCs cannot block calls bound for a particular CLEC, or increase the amount charged for calls to a particular CLEC, even if the CLEC is engaged in access stimulation or other abusive practices.

8. CLECs have bottleneck monopolies on access with regard to their end user customers.

INS's Violation of Section 203

9. Section 203(a) of the Communications Act requires INS to file a tariff setting forth the charges and terms for the services it provides, and Section 203(c) prohibits INS from imposing charges or enforcing the terms of any service except as set forth in its tariff.

10. Because INS's CEA tariff pertains only to "Centralized Equal Access Service" but does not define that term, that term is given its common meaning in the industry, which is found in the Commission decisions initially approving the provision of that service.

11. As approved by the Commission, INS's tariffed CEA service (like those of other CEA providers) is limited to facilitating the provision of equal access to small, rural LECs with low volumes of traffic.

12. Therefore, INS cannot bill AT&T for any service other than legitimate CEA service as defined by the Commission in its Orders approving the applications of INS and other CEA providers.

13. Given the large volumes, the lack of originating calls, the overwhelmingly interstate nature of the calls and the limited number of CLECs (and conference and chat companies) that ultimately receive such calls, INS's delivery of calls to Great Lakes and other access stimulating CLECs is not CEA service under INS's tariff.

14. By billing AT&T its CEA tariffed rates for a service that its CEA tariff does not cover, and for which INS has no other authorization or tariff, INS violated Sections 203(a) and 203(c) of the Act.

INS's Violation of Section 201(b)

15. Section 201(b) of the Communications Act provides that a carrier's rates and practices shall be just and reasonable, and that any unjust or unreasonable rate or practice is unlawful.

16. INS's billing of AT&T for a service not covered by its tariff is an unjust and unreasonable practice and therefore unlawful under Section 201(b) of the Act.

17. INS's billing of AT&T for a service that adds no value or benefit to end user customers or IXCs, but imposes higher costs, is an unjust and unreasonable practice and therefore unlawful under Section 201(b) of the Act.

18. INS's inclusion of **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** facilitates those CLECs' ability to exploit their bottleneck monopolies, and provides no offsetting benefits to consumers or competition, is an unjust and unreasonable practice and therefore unlawful under Section 201(b) of the Act.

INS's Legal Positions Regarding the Applicability of Its CEA Tariff to Access Stimulation Traffic Have No Merit.

19. Because the Commission's approval of INS's CEA service under Sections 201(a) and 214 of the Communications Act occurred before the advent of CLECs or access stimulation, such approvals do not authorize INS to apply its CEA rates to access stimulation traffic.

20. Similarly, the Commission has never found that long distance carriers are obligated under Section 201(a) to complete access stimulation traffic to CLECs using CEA services.

21. INS's addition of Great Lakes and other access stimulating CLECs as "participating carriers" under its CEA tariff did not alter the scope of the service described in, and thus authorized under, INS's tariff, which remains limited to CEA service as described in the Commission's approvals of INS and other CEA providers.

22. The "mandatory use" requirement once associated with CEA traffic, which required all traffic bound for LECs participating in the CEA arrangement, has no application, force or effect with respect to access stimulating CLECs such as Great Lakes.

INS's Violation of the Rate Cap and Rate Parity Rules

23. Because INS is a LEC that provides interstate or intrastate exchange access services to other networks, such as AT&T's network, INS is subject to the Commission's transitional access charge rules, including the rate cap and rate parity requirements in Section 51.901(b) of the Commission's rules.

24. For purposes of the application of the rate cap and rate parity rules, it does not matter if INS is a "rate of return" carrier or a "competitive local exchange carrier" under those rules; the rules apply to both types of LECs.

25. Because INS's interstate CEA rate (which includes switching and transport) was $0.00819 per minute on December 29, 2011, when the Commission's *Connect America Order* rules became effective, INS's CEA rates were capped at $0.00819 per minute.

26. INS's current interstate CEA rate of $0.00896 per minute exceeds that cap, and thus violates the Commission's rules and is unlawful and void.

27. INS's Iowa intrastate CEA rate of $0.0114 per minute for switching, plus an additional charge for transport, violates the Commission's rate parity requirements because it exceeds INS's capped interstate CEA rate of $0.00819 per minute and is unlawful and void.

28. INS's interstate tariffs containing rates that violate the rate cap are not "deemed lawful" because INS was prohibited from filing a tariff with rates in excess of the cap, and because the tariffs were unlawful when filed, they could not subsequently become "deemed lawful" by operation of Section 204(a)(3) of the Communications Act.

29. INS's intrastate tariff also is not "deemed lawful" because the Commission's rate parity rules required INS to reduce it intrastate rates to the level of its interstate rates, and when INS failed to do so, its intrastate tariff became unlawful and void.

30. Because INS's interstate and intrastate tariffs are unlawful and void, INS could not lawfully bill AT&T for such charges under those tariffs.

INS's Violation of the Commission's Access Stimulation Rules

31. A LEC is deemed to be involved in access stimulation if its ratio of terminating access traffic to originating access traffic exceeds 3:1 and it has entered into access revenue sharing agreements.

32. If a LEC's ratio of terminating access traffic to originating access traffic exceeds the 3:1 ratio, the LEC is presumptively engaged in access stimulation.

33. INS's ratio of terminating access traffic to originating access traffic has exceeded 3:1 every year since 2008, and therefore it is presumptively engaged in access stimulation.

34. INS's traffic agreements with **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

35. INS is engaged in access stimulation as defined by the Commission's rules.

36. INS is a CLEC under the Commission's rules.

37. INS is subject to the Commission's access stimulation rules that apply to CLECs.

38. Under the Commission's access stimulation rules, INS was obligated to file a tariff that contains rates that match the rates of the lowest price cap LEC in Iowa, which is CenturyLink.

39. Because CenturyLink offers a direct connection service, and that is the lowest priced means of terminating the high volumes of traffic generated by Great Lakes and other access stimulating CLECs, INS was obligated to offer AT&T a direct connection at the same rates and on the same terms as CenturyLink.

40. INS's tariff does not offer such a direct connection, and therefore INS's tariff is unlawful and INS's practice of billing AT&T for such traffic at its tariffed CEA rates is unjust and unreasonable in violation of Section 201(b) of the Communications Act.

41. In addition, INS's practice of inserting itself into the call routing path on access stimulation traffic, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** is unjust and unreasonable in violation of Section 201(b) of the Communications Act.

INS's Unlawful Manipulation of Its CEA Rate

42. INS's CEA rate of $0.00896 is unreasonably high in violation of Section 201(b) of the Communications Act for the following reasons: (a) it has declined only 24% since 1989, whereas the average access rates in the industry have declined about 80% in that time; (b) INS's investment in its switching facilities has been almost entirely depreciation; (c) INS's rates do not reflect any gains in efficiency from the millions of purported investments in INS's network and advances in transmission technology; and (d) INS has significantly lowered its rates for other transport services, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** since the mid 2000s.

43. INS's practice of recording the investment in its network funded by revenues from the Access Division on the books of the Network Division causes its CEA rates to be higher than they would be if properly recorded on the books of the Access Division, and its practice of having the Access Division pay the Network Division at above-market lease rates for DS-3s, are unjust and reasonable in violation of Section 201(b) of the Communications Act.

44. INS's practice of increasing, without explanation, the percentage of its overall costs for cable and wireline costs allocated to the Access Division from 48% (in 2004-2008) to 70% (in 2013-2016), which all things equal would increase its CEA rates, is unjust and unreasonable in violation of Section 201(b) of the Communications Act.

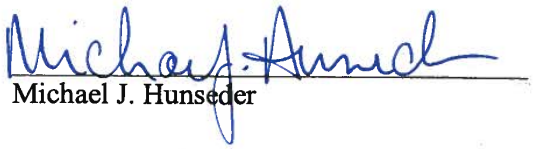
45. The lease costs allocated to INS's Access Division are not reasonable and in effect cross-subsidize the services offered by INS's other divisions.

46. INS's practice of increasing the percentage of interstate traffic it handles, thereby increasing the percentage of revenue requirement assigned to interstate traffic from approximately 40% in the mid 2000s to over 90% today, without notifying the Commission that a key assumption on which INS's proposal was approved – *i.e.*, that the majority of INS's network would be paid for by revenues from intra-LATA toll calls – had changed, is unjust and unreasonable in violation of Section 201(b) of the Communications Act.

47. INS's traffic forecasts are not reasonable and as a consequence, its rates are not reasonable.

48. INS's practice of including amounts as "uncollectible revenues," which are costs that increase its revenue requirement, when such amounts remain subject to pending disputes and **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** (and thus may yet be collected), is unjust and unreasonable in violation of Section 201(b) of the Communications Act.

Respectfully submitted,



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PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(303) 299-5708** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

LEGAL ANALYSIS IN SUPPORT OF FORMAL COMPLAINT OF AT&T CORP.

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INTRODUCTION

AT&T respectfully submits this Legal Analysis in support of its Formal Complaint against INS to explain in more detail the legal basis of AT&T's Counts I and II, which allege, on various grounds, that INS has violated both Section 201(b) and Section 203 of the Communications Act as to the tariffed charges it has billed to AT&T.

In Part I, AT&T explains that INS violated Sections 201(b) and 203 by billing AT&T for Centralized Equal Access ("CEA") service on very large volumes of access stimulation traffic. As numerous Commission decisions make clear, CEA service is a specialized service that bears virtually no resemblance to the services needed to transport large volumes of access stimulation traffic. Further, INS's access services tariff applies strictly to CEA service and, as such, does not apply to access stimulation traffic. Indeed, INS's recent tariff filings—which initially offered a contract tariff that, for the first time, sought to include some access stimulation traffic within INS's CEA tariff,[1] and then replaced that offer with a purported "volume discount" service for certain access stimulation traffic[2]—confirm that INS's CEA service and its CEA tariff rates do not apply to access stimulation traffic. Consequently, because INS does not have a valid access tariff on file for the access service it allegedly provided to AT&T on the access stimulation traffic at issue, INS has violated Section 203. 47 U.S.C. §§ 203(a), (c); *see infra*, Part I.A. Moreover, INS has not negotiated an agreement with AT&T as to those services. *See In re Connect Am. Fund*, 26 FCC Rcd. 17763, ¶ 812 (2011) ("*Connect America Order*") (carriers can recover access services via

[1] *See* Ex. 46, Iowa Network Services, Inc. dba Aureon Network Services, Iowa Network Access Division, Tariff F.C.C. No 1, (Transmittal No. 33) (Description and Justification and Cost Support Material) (filed April 14, 2017) ("Contract Tariff Support") and (Proposed Revised Tariff Pages) (filed April 14, 2017; effective April 29, 2017) ("Revised Tariff Pages") (collectively, "INS April 2017 Revised Tariff Filing").

[2] *See* Ex. 47, Iowa Network Access Division, Application No. 8 (dated May 16, 2017) together with attachments (collectively "INS May 2017 Revised Tariff Filing").

tariffs or negotiated agreements). In these circumstances, INS cannot collect any of the access charges that it has improperly billed to AT&T. 47 U.S.C. § 203.

Part I also explains that INS has violated Section 201(b), because it is an unreasonable practice for INS: (1) to have charged AT&T without a valid tariff, and in violation of its inapplicable CEA tariff; (2) to have imposed its high, per minute CEA rate on the transport of access stimulation traffic, when there are far more cost-effective methods of transporting such traffic; and (3) to have entered into **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** with CLECs engaged in access stimulation, which, given the Commission's access charge rules (requiring, *inter alia*, AT&T to complete calls to access stimulation carriers), has negatively impacted AT&T's ability to obtain a competitively-priced alternative to INS's transport services. *See infra* Part I.B.

In Part II, AT&T explains that, even as to the relatively small volume of legitimate CEA traffic that is subject to INS's CEA tariff (or even assuming, *arguendo*, that INS could have properly charged AT&T under its CEA tariff for access stimulation traffic), INS's CEA tariff is unlawful and it has overcharged AT&T. In 2011, the Commission, as part of its transitional rules for access services, issued "rate cap" and "rate parity" rules. *Connect America Order*, ¶¶ 799–801; 47 C.F.R., Part 51, Subpart J. As set forth in Section III of the Complaint, INS is subject to these rules, and its CEA tariffs violate them.

In the District Court, INS raised two arguments to excuse its violations, but neither has merit. Contrary to its assertions, INS is not excused from compliance with the Commission's rate cap and rate parity rules because it is an intermediate carrier. Those rules apply to "any" LEC, and INS is clearly a LEC. *See infra* Part II.A. Further, the fact that INS's interstate tariff, containing a rate above the cap, was not suspended by the Commission immediately after its filing

does not mean that INS's unlawful tariff rate became "deemed lawful." Before INS's unlawful tariff filing, the Commission had already determined that above-cap rates are unreasonable under the Act and the Commission's rules, and INS's tariff filing, of course, was required to conform to that determination. *Global NAPs, Inc. v. FCC*, 247 F.3d 252, 259–60 (D.C. Cir. 2001) (upholding the FCC's conclusion that a tariff was *void ab initio* and invalid from the date it was published and explaining: "Merely because a tariff is presumed lawful upon filing does not mean that it is lawful. Such tariffs still must comply with the applicable statutory and regulatory requirements"). INS could not effectively amend the Commission's rate cap rule through its unlawful act of filing a tariff that it was prohibited from filing in the first instance. *See infra* Part II.B. Because INS's CEA tariffs violate the Commission's rate cap and rate parity rules and are invalid, INS cannot collect access charges from AT&T under those tariffs.

Part III explains that, even assuming, *arguendo*, that INS's CEA tariffs encompassed access stimulation traffic and did not violate the Commission's rate cap and rate parity rules, INS's tariffs are invalid for an additional reason. INS is engaged in "access stimulation" within the meaning of the Commission's rules. 47 C.F.R. § 61.3(bbb). INS plainly routes far more terminating traffic than originating traffic, and it also has "access revenue sharing agreements" with a number of CLECs engaged in access stimulation. *See infra* Part III.A. INS's traffic agreements with CLECs engaged in access stimulation **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See infra* Part III.A. In fact, the traffic agreements that INS and access stimulating CLECs have signed were instrumental in facilitating the billions of minutes of access stimulation traffic that has flowed

into Iowa over the past decade. *See* AT&T Complaint, Sections I.B and I.D. Even though INS is engaged in access stimulation, it failed to file revised tariffs, as required by the Commission's rules, which is "sanctionable under section 503 of the Act" and also "constitute[s] 'furtive concealment'" (*see Connect America Order* ¶ 697), which makes INS liable for refunds. *See infra* Part III.B.[3]

In Part IV, AT&T explains that, based on the information AT&T has received to date, INS has engaged in material manipulations of its tariffed CEA rates. As such, at a minimum, INS should be required to disclose all of the material it used to develop its CEA rates, and the Commission should, in a later phase or a separate proceeding, determine a reasonable rate for INS's services. In doing so, the Commission should also consider whether INS has "furtively employ[ed] improper accounting techniques in a tariff filing, thereby concealing" INS's unreasonable rates, such that INS is liable for refunds to all its customers. *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 413 (D.C. Cir. 2002) ("*ACS*").

ARGUMENT

I. INS'S PROVISION OF CEA SERVICE IN CONNECTION WITH ACCESS STIMULATION TRAFFIC IS UNLAWFUL UNDER ITS TARIFF AND SECTIONS 201 AND 203 OF THE ACT.

Since January 2013, INS has improperly charged AT&T INS's tariffed rate for CEA service on more than 7 billion minutes of traffic bound for access stimulating CLECs (mostly Great

[3] In any event, even if these agreements were outside the scope of the Commission's access stimulation rules, INS's practices in connection with access stimulation are unreasonable under Section 201(b). *See infra* Part III.C. If the access stimulating CLECs were themselves transporting the traffic, it is clear that their services would be subject to the pricing constraints contained in the Commission's rules. INS, by agreeing to transport that traffic – **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** – thus forced itself into the call flow, with the effect of raising the costs of transport. As a consequence, it has subjected itself to the Commission's access stimulation rules.

Lakes). *See* Habiak Decl. ¶ 52. As explained in greater detail below, CEA service was introduced about 25 years ago, and it was intended to facilitate the provision of "equal access" service for the customers of small, rural telephone companies that did not have sufficient long distance traffic to justify provision of equal access on anything other than a centralized basis. *See infra* Part I.A.1; *see also* AT&T Complaint, Section I.A. The principal focus of CEA service was on originating traffic, where callers could not access competing long distance carriers through "1+" dialing. Further, as the Commission has explained, the purpose of INS's CEA service was "to *lower* the cost of transporting traffic from Des Moines to the various remote rural exchanges." *AT&T Corp.* v. *Alpine Commc'ns, LLC*, 27 FCC Rcd. 11511, ¶ 29 (2012) ("*Alpine*").

Access stimulation traffic has no similarity to legitimate CEA traffic, and INS's practice of charging AT&T for CEA service (at INS's tariffed CEA rates) in connection with access stimulation traffic is improper and substantially *raises* the costs of transporting that traffic. *See infra* Parts I.A.2 and I.B; *see also* AT&T Complaint, Section II.A. The access stimulation traffic at issue predominantly consists of terminating traffic, for which equal access is not necessary, or even relevant. Moreover, the call volumes associated with access stimulation traffic are not small, but massive. Further, nothing indicates that CEA service was designed, implemented or intended to be provided in connection with terminating traffic routed to access stimulating CLECs. Indeed, the fact that INS recently filed amendments to its access tariff proposing to add new services that are specifically targeted to access stimulation traffic (*see supra* notes 1 and 2) confirms that INS's practice of billing AT&T for CEA service on access stimulation traffic is not consistent with the general terms of its tariff (which apply only to CEA service) and violates both Sections 201(b) and 203 of the Act. *See infra* Parts I.A. and I.B.

A. INS's Provision of CEA Service Is Not Consistent with the Terms of its Tariff and thus Violates Section 203 of the Act.

Section 203(a) of the Act states that "[e]very common carrier … shall … file with the Commission … schedules showing all charges … for interstate and foreign wire or radio communications … and showing the classifications, practices, and regulations affecting such charges." 47 U.S.C. § 203(a). Section 203(c) further provides that "[n]o carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this chapter …; and no carrier shall … employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule." 47 U.S.C. § 203(c).

As noted in the Complaint, the INS tariff at issue in this proceeding (Tariff F.C.C. No. 1) is entitled "Centralized Equal Access Service" and it sets forth the "Regulations, Rates and Charges applying to *the provision of interstate Centralized Equal Access Service* within the certificated operating territory of: Iowa Network Access Division in the State of Iowa."[4] The phrase "Centralized Equal Access Service" appears on every page of INS's tariff and is capitalized throughout. Ex. 3, INAD Tariff FCC No. 1. Nevertheless, the tariff does not include a definition of CEA service. Consequently, to interpret that term and the scope of INS's tariff, one must look to the Commission's decisions initially approving the provision of this service.[5]

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[4] *See* AT&T Complaint, Section II.A; *see also* Ex. 3, INAD Tariff FCC No. 1 (filed Aug. 10, 1988), at original title page (emphasis added).

[5] *See Atchison, Topeka & Santa Fe Ry. Co. v. United States*, 181 Ct. Cl. 315, 322 (1967) ("The terms used in tariffs, unless specially defined, must be given their ordinary commercial meaning as ordinarily understood in the particular trade or industry."); *Broadvox-CLEC, LLC v. AT&T Corp.*, 184 F. Supp. 3d 192, 213–14 (D. Md. 2016); *AT&T Corp. v. YMax Commc'ns Corp.*, 26 FCC Rcd. 5742, ¶¶ 27, 38 & n.92 (2011) ("*YMax Order*") (when a tariff does not define terms, "we must construe these terms according to their common meaning in the industry") (citing cases).

Because CEA service is, and always has been, a narrow service intended to facilitate the provision of equal access by small rural LECs with very low volumes of traffic, *see infra* Part I.A.1, INS's CEA tariff is, by its own terms, inapplicable to other types of access services.[6] In particular, INS's CEA tariff does not apply to the provision of access services on access stimulation traffic, which is much different than legitimate CEA traffic in many respects. *See infra* Part I.A.2.

1. CEA Service Was Approved for the Limited Purpose of Facilitating the Provision of Equal Access Service to Small, Rural LECs Carrying Very Low Traffic Volumes.

As explained in AT&T's Formal Complaint, CEA service was first approved for use in Indiana in 1986.[7] At that time, the Commission concluded that CEA service would facilitate the provision of equal access by making service to rural communities "much more attractive to competitive long distance carriers" and thereby "increase . . . the number of carriers available to most consumers" in rural areas. *Indiana Switch CCB Order* ¶ 23. In reaching this conclusion, the Commission observed that some of the rural telephone exchanges were "so small that equal access might never be provided and no alternative carrier might be interested in serving the area even if equal access were provided." *Id.*

Similar statements are found in the Commission's subsequent decisions approving CEA proposals for use in Iowa, South Dakota, and Minnesota. For example, in approving the provision of CEA service in Iowa, the Commission noted that INS's proposal was:

> presented as a solution to the problem of how to achieve competition in long distance services in small rural communities … [INS] believes an important reason

[6] *See, e.g.*, *AT&T Corp. v. All Am. Tel. Co.*, 28 FCC Rcd. 3477, ¶¶ 35–37 (2013) (terms defining the scope of the tariff, including terms on the title page, are "fundamental to whether the access tariffs apply at all").

[7] *See* AT&T Complaint Section I.A; *see also In re Application of Ind. Switch Access Div.*, File No. W-P-C-5671, 1986 WL 291436, ¶¶ 2–15 (F.C.C. Apr. 10, 1986) ("*Indiana Switch CCB Order*"), *on review* 1 FCC Rcd. 634, ¶ 5 (1986) ("*Indiana Switch Review Order*"). AT&T refers to these two orders collectively as the "*Indiana Switch Orders*."

> [why competing IXCs had, to that point, not sought equal access to member LECs] is that those IXCs would find it an expensive task to provide their own facilities to each of these small exchanges, *given the relatively low amount of toll traffic they generate*.[8]

The Commission thus approved INS's application on the belief that aggregating the "low amount of toll traffic" generated by the 136 small rural Iowa LECs constituted the most efficient way to transport the traffic at a lower cost to IXCs and their customers, while at the same time providing rural callers with an accelerated ability to have "equal access" and use any IXC's long distance service without dialing additional numbers.[9] **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]** Ex. 11, Deposition of Mark Shlanta, *Northern Valley Commc'ns, LLC, v. AT&T Corp.*, No. 14-1018, at 384:22–385:4 (D.S.D. June 3–4, 2015) ("Shlanta Dep.").[10]

[8] *In re Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶ 3 (C.C.B 1988) ("*INS Order*") (emphasis added). INS's application to provide CEA service for intrastate long distance calls in Iowa was likewise directed at a narrow issue, specifically the provision of centralized equal access for the 136 participating rural LECs. *In re Iowa Network Access Div., Div. of Iowa Network Servs.*, RPU-88-2, 1988 Iowa PUC LEXIS 1 (Iowa Utilities Board Oct. 18, 1988) ("*INS Intrastate Order*").

[9] *INS Order* ¶ 3; *Alpine* ¶ 29. The applications to provide CEA service in South Dakota and Minnesota were approved for the same reasons. *In re the Application of SDCEA, Inc.*, 5 FCC Rcd. 6978, ¶¶ 24–25 (1990) ("*SDCEA Order*"); Ex. 12, Memorandum Opinion, Order and Certificate, *In re Application of Minn. Indep. Equal Access Corp.*, File No. W-P-C-6400, ¶¶ 15–16 (F.C.C. rel. Aug. 22, 1990) ("*MIEAC Order*").

[10] The Commission also ordered IXCs to use INS's network for both originating and terminating toll traffic. *INS Order* ¶¶ 32–33. In making this determination, the Commission specifically took note of INS's assumption that "the majority of the network's costs [would] be recovered from intraLATA toll calls" and cautioned that if that assumption changed, the Commission would need to review INS's proposal. *Id.* ¶ 32. And, while the Commission recognized that a mandatory use requirement "would eliminate the possibility of competition in terminating interstate traffic," it nevertheless found "[g]iven the expected benefits" that the requirement "does not appear to be unlawful or unreasonable." *Id.* ¶ 33.

It was on the basis of these considerations that the Commission determined that INS's network "appears to constitute a reasonable means of providing equal access in rural Iowa, and appears to be the only proposal likely to provide equal access services capable of reaching all [INS] telephone subscribers." *INS Order* ¶ 23. At no point, however, did the Commission conclude that CEA service could be expanded beyond the limited purposes for which it was approved, *i.e.*, to facilitate the roll-out of equal access service on small volumes of calls to rural local exchange companies.[11] Moreover, the Commission has never authorized INS or any other CEA provider to charge CEA rates in connection with access stimulation traffic.

In light of the specialized meaning of CEA service in the industry and the fact that INS's CEA tariff applies only to INS's "Provision of Centralized Equal Access Service" (Ex. 3, INAD Tariff F.C.C. No. 1), INS can bill an IXC CEA rates under that tariff only when it actually provides legitimate CEA service; it does not apply to other types of access services, particularly those that bear little or no resemblance to legitimate CEA service. *YMax Order*, ¶ 12 ("[A] carrier may lawfully assess tariffed charges only for those services specifically described in its applicable tariff."); *MCI Worldcom Network Servs., Inc. v. Paetec Commc'ns Inc.*, No. Civ.A.04-1479, 2005 WL 2145499, at *3–*4 (E.D. Va. Aug. 31, 2005) (holding access charges unlawful when service was provided outside the scope of the tariff).

[11] The volumes of traffic for which INS provides CEA service to carry traffic to and from these small rural LECs have – consistent with the limited purposes of CEA service – remained relatively low. *See* Habiak Decl. ¶ 21; *see also* Ex. 2, INS Worksheet (Aureon 02696–02708), at Aureon 02698–99 **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

2. Access Stimulation Traffic Has Virtually Nothing in Common with Legitimate CEA Traffic.

Access stimulation traffic differs in several critical respects from the type of traffic for which CEA service was initially approved, and thus INS's CEA tariff does not apply to INS's switching and transport of access stimulation traffic.

First, the Free Calling Parties ("FCPs") that do business with access stimulating CLECs have no need for equal access or 1+ dialing. Indeed, that capability is wholly irrelevant to access stimulation. The free calling services provided by the FCPs almost exclusively entail the IXC's long distance customers placing calls to the FCPs' conference and chat equipment, which is located at the access stimulating CLEC's end office switches. *See* Habiak Decl. ¶ 19. As a consequence, the FCPs have no need to place any long distance calls (and thus no need for equal access service).[12]

Second, the overall call volumes associated with stimulation traffic differ markedly from legitimate CEA traffic. As detailed in the Complaint and reported in INS's Tariff Filings, with the advent of access stimulation in 2005, INS began to transport massive volumes of access

[12] In any event, even if these FCPs were to place a *de minimis* amount of originating long distance calls, the access stimulating CLECs' switches (which were almost certainly purchased since 1996) have the capability of providing equal access. In fact, Great Lakes' tariff offers a "Presubscription" service "by which an End User may select and designate an IXC for the provision of interstate telephone service." Ex. 60, GLCC Tariff F.C.C. No. 2, Section 6.1.1 (filed Jan. 11, 2012).

stimulation traffic.[13] INS's interstate access minutes went from 830 million minutes in 2003 to almost 3.9 billion minutes in 2011. *See* Complaint, Section I.B. Moreover, substantially all of this growth was from access stimulation; during this same period, INS's legitimate CEA traffic was beginning to decline – a trend that has accelerated in recent years.[14] Because of this significant change in volumes, a key benefit that the Commission associated with CEA service, *i.e.*, that it is a more efficient way to aggregate very low volumes of traffic from many independent, small LECs, is entirely missing with respect to INS's handling of access stimulation traffic.

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[13] *See* Complaint Section I.B; *see also* Ex. 16, INS Introduction, Overview and Rate Development, July 3, 2006 FCC Annual Access Charge Tariff Filing, at 1–2 (filed June 26, 2006) ("INS 2006 Tariff Filing") (attributing a projected 32% increase in CEA traffic in the test period ending June 30, 2007, to "a significant increase in toll aggregator traffic which began to appear during the last quarter of 2005"); Ex. 17, INS Introduction, Overview and Rate Development, July 1, 2008 FCC Annual Access Charge Filing, at 3–4 (dated June 24, 2008) ("INS 2008 Tariff Filing") (for the test period ending June 30, 2009, INS "projects 1.6 billion terminating conference call minutes generated by call aggregators"); Ex. 19, INS Introduction, Overview and Rate Development, July 3, 2012 FCC Annual Access Charge Filing, at 2 (dated June 26, 2012) ("INS 2012 Tariff Filing") ("aggregator traffic is projected to increase 1.2%"); Ex. 22, INS Introduction, Overview and Rate Development, July 1, 2016 FCC Annual Access Charge Filing, at 2 (dated June 16, 2016) ("INS 2016 Tariff Filing") ("IXC traffic delivered to LECs providing service to call aggregators is projected to increase 6.53%"); *see also* Ex. 2, INS Worksheet, at Aureon_02698–99 (showing that access stimulation traffic grew in most years from 2007 to 2016).

[14] *See* Ex. 17, INS 2008 Tariff Filing, at 3–4 (for the test period ending June 30, 2009, "[o]ther access generating traffic is currently declining"); Ex. 19, INS 2012 Tariff Filing, at 2 ("LEC traffic is projected to decrease approximately 16.7% during [the test period ending June 30, 2013]."); Ex. 20, INS Introduction, Overview and Rate Development, July 2, 2013 FCC Annual Access Charge Filing, at 2 (dated June 17, 2013) ("INS 2013 Tariff Filing") ("The decrease in interstate traffic for the projected test period results primarily from continued reductions in interstate access minutes by independent local exchange carriers that originate or terminate calls over the INS network."); Ex. 21, INS Introduction, Overview and Rate Development, July 1, 2014 FCC Annual Access Charge Filing, at 2 (dated June 16, 2014) ("INS 2014 Tariff Filing") ("IXC traffic exchanged with LECs is projected to decrease approximately 10.47% during [the test period ending June 30, 2015]."); Ex. 22, INS 2016 Tariff Filing, at 2 ("IXC traffic exchanged with LECs that do not provide service to call aggregators is projected to decrease approximately 2.90% during [the test period ending June 30, 2017]."); *see also* Ex. 2, INS Worksheet, at Aureon 02698-99 **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

Third, substantially all of the access stimulation traffic at issue is terminating, interstate traffic. *See* Habiak Decl. ¶ 20. By contrast, legitimate CEA service generally consists of a more balanced mix of originating and terminating traffic,[15] and as previously discussed, a key assumption underlying INS's proposal was that "the majority of the networks' costs will be recovered from intraLATA toll calls." *INS Order* ¶ 32. As is clear from INS's own tariff filings, that assumption is no longer accurate – virtually all of the access stimulation traffic that INS transports is interstate, terminating traffic. *See* Habiak Decl. ¶ 20. Indeed, in 2008, INS revised the PIU factor that it uses in its rate filings to reflect that reality.[16]

Fourth, in contrast to legitimate CEA traffic, access stimulation traffic is not directed to a large number of different LECs or end users. Instead, such traffic is routed to a very limited number of high volume telephone lines that have been assigned to a limited number of FCPs, which share nothing in common with the rural telephone end users that CEA service was designed to serve.[17]

For all these reasons, the access services that INS provides when transporting access stimulation traffic to CLECs are far different than INS's "Provision of Centralized Equal Access," (Ex. 3, INAD Tariff F.C.C. No. 1), as that term is commonly understood. Consequently, INS's CEA tariff does not apply to access stimulation traffic.

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[15] *See* Ex. 2, INS Worksheet, at Aureon 02698-99 **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[16] *See* Ex. 17, INS 2008 Tariff Filing, at 2.

[17] *See* Habiak Decl. ¶¶ 21–22. **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]** Ex. 11, Shlanta Dep. at 384:22–385:8.

3. INS Never Amended Its Tariff or Otherwise Sought Authorization to Provide CEA Service with Respect to Access Stimulation Traffic.

At no point has INS amended its tariff to make clear that the phrase "Centralized Equal Access Service" (as used in its tariff) encompasses the billing of CEA rates in connection with the transport of access stimulation traffic. *See* 47 C.F.R. § 61.2(a) ("In order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations."). INS also has not filed a new tariff that makes its existing CEA rates applicable to access stimulation traffic. *See* 47 U.S.C. § 203(a). To the contrary, it recently sought to amend its CEA tariff to add a new and different contract tariff service that is specifically targeted at terminating long distance traffic routed to CLECs engaged in access stimulation. *See supra* note 1; *see also* AT&T Complaint, ¶ 74 & note 71. Not only did that new contract service have a different (and lower rate) than the rate applicable to legitimate CEA traffic, it was subject to different terms and, by INS's own admission, is thus "not like" CEA service. *See* Ex. 46, April 2017 Revised Tariff Page 146.1 (§ 7.1.1) (emphasis in original); *see also* AT&T Complaint, Section II.A.1 (identifying some but not all of the different terms and conditions).[18] Because transport provided on access stimulation traffic is, by INS's own admission "not like" transport provided for legitimate CEA arrangements, INS's CEA tariff, by its terms, encompasses only legitimate CEA service.

By contrast, INS's tariff for CEA service does not and cannot apply to access stimulation traffic. Moreover, it is hornbook law that a carrier cannot collect tariffed charges for an access

[18] By letter dated May 16, 2017, INS sought leave to withdraw its proposed contract tariff service and to substitute a new "volume discount" service offering the same rate ($0.00649 per minute) and requiring that the customer have a "minimum monthly usage of at least 25 million interstate, interlata minutes and 80% or greater utilization of each trunk group" and sign a separate service agreement. *See* Ex. 47, INS May 2017 Revised Tariff Filing, at Second Revised Tariff Page 137, Section 6.73; *see also* AT&T Complaint, ¶ 74, note 72.

service where the carrier lacks a valid tariff applicable to that service.[19] Accordingly, INS's billing of its tariffed CEA rates in connection with access stimulation traffic violated both its tariff and Section 203 of the Act, and AT&T was thus fully justified in refusing to pay INS's unlawful charges for such traffic.[20]

Although INS's lack of an applicable tariff is dispositive here, it is also significant that INS never sought authorization from the Commission to provide CEA service with respect to access stimulation traffic. INS likewise did not comply with the Commission's rules that require INS, as a dominant carrier, to make a tariff filing and provide certain data as to the expected performance and impact of that new service offering whenever INS wishes to offer a new service (or to expand an existing service offering). *See* 47 C.F.R. § 61.38(b)(2); *id.* § 61.3(y) (defining "New service offering").[21] Instead, beginning in 2005, INS secretly entered into traffic agreements with a

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[19] *See, e.g.*, *AT&T Corp. v. All Am. Tel. Co.*, 28 FCC Rcd. 3477, ¶¶ 34–41 (2013); *YMax Order* ¶ 12 ("Consistent with these statutory provisions [in Section 203], a carrier may lawfully assess tariffed charges only for those services specifically described in its applicable tariff."); *MCI WorldCom Network Servs. v. PaeTec Commc'ns, Inc.*, 204 Fed. Appx. 271, 272 n.2 (4th Cir. 2006) ("[A] carrier is expressly prohibited from collecting charges for services that are not described in its tariff."); *CoreTel Va., LLC v. Verizon Va., LLC*, 752 F.3d 364, 374 (4th Cir. 2014) (A carrier "must provide its services in *exactly* the way the carrier describes them in th[e] tariff." (emphasis added)).

[20] The provision in INS's interstate tariff that provides that "[a]ny entity delivering non-access service traffic to INS must either negotiate an interconnection agreement with INS or pay the rates and charges in 6.8 following" (*see* Section 6.7 of INS's tariff) does not change this result. Ex. 3, INAD Tariff FCC No.1 §§ 6.1, 6.7 and 6.8. *First*, the traffic at issue is not "non-access traffic;" the basis for AT&T's decision not to pay is that the traffic is not CEA traffic but access stimulation traffic. *Second*, Section 6.7 is itself unlawful; INS cannot by fiat impose access service charges on non-access services.

[21] Although the Commission has rolled back the requirement that telecommunications carriers must seek authorization every time they want to introduce a new service, *see In re Implementation of Section 402(b)(2)(A) of the Telecomms. Act of 1996*, 14 FCC Rcd. 11364, ¶ 2 (1999), the Commission's rules on new services remain in place. 47 C.F.R. § 61.38(b). Instead of complying with these rules, INS made opaque bi-annual tariff filings that purported to address the substantial influx of access stimulation traffic over its network, but that in fact appear to have been manipulated using improper accounting methods. *See infra* Part IV.

number of access stimulating CLECs, and unilaterally commenced unlawfully billing AT&T and other IXCs its high, per-minute CEA rates for access stimulation traffic. *See* AT&T Complaint, Section I.D.[22]

B. INS's Provision and Billing of CEA Services and CEA Rates in Connection with Access Stimulation Traffic Violates Section 201(b) of the Act.

Section 201(b) of the Act provides that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b). The Commission has broad authority to declare a common carrier's practices unreasonable under Section 201(b).[23] INS's provision and billing of its tariffed CEA services and rates in connection with access stimulation traffic violates Section 201(b) in multiple respects.

First, the fact that INS billed AT&T for CEA service in violation of the terms of its tariff not only constitutes a violation of Section 203 but also is an unreasonable practice under Section 201(b). Indeed, the Commission has already determined that a carrier's failure to provide service

[22] Further, it is beyond credible dispute that, if INS had asked for such approval, its request would have been denied. As explained above, CEA service was not designed for access stimulation traffic, and access stimulation traffic differs in a number of critical respects from legitimate CEA service. *See supra* Parts I.A.1 and A.2. Moreover, the use of CEA service to transport access stimulation traffic does not result in lower transport costs, which was one of the principal benefits that the Commission cited in approving INS's initial application to provide CEA service. *See Alpine* ¶ 29. As detailed in the Complaint, there are a number of less costly alternatives for transporting access stimulation traffic to the end office switches of the CLECs that participate in access stimulation. *See* AT&T Complaint, Section II.A.2.

[23] *See, e.g.*, *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 48–49 (2007); *Capital Network Sys., Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994); *W. Union Tel. Co. v. FCC*, 815 F.2d 1495, 1501, n.2 (D.C. Cir. 1987).

in compliance with its tariff constitutes a violation of Section 201(b).[24]

Second, because CEA service is not a cost effective method of transporting access stimulation traffic, INS's imposition of its tariffed CEA rates on this traffic is unreasonable. As noted above and detailed in the Complaint (*see* Section II.A.2), there are a number of less costly ways of transporting access stimulation traffic to the end office switches of the CLECs that participate in access stimulation. As a consequence, INS's imposition of its tariffed CEA rates on access stimulation traffic necessarily resulted in the imposition of significantly higher costs on AT&T and its customers.

In its *Alpine* decision, the Commission made clear that INS's CEA service had been approved because it would "*lower* the cost of transporting traffic from [a centralized point in Des Moines, Iowa] to the various remote rural exchanges" in Iowa. *Alpine* ¶ 29. The Commission further held that when transport arrangements did not add value, and instead imposed higher costs, such arrangements were unreasonable under Section 201(b).[25] As demonstrated in Section II.A.2 of the Complaint, that is exactly what INS's billing of CEA rates on access stimulation traffic does, and for this additional reason, INS's billing of such rates violates Section 201(b).

Third, in the circumstances presented here, the **[[BEGIN CONFIDENTIAL]]**

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[24] *See, e.g.*, *YMax Order* ¶ 34 & n.105 ("Specifically, we find that [a LEC's] violation of section 203(c) of the Act constitutes an unreasonable practice that violates section 201(b) of the Act.").

[25] *Id.* ¶¶ 44–48; *see also Hypercube v. Comtel Telecom Assets*, Civil Action No. 3:08-cv-2298-g, 2009 WL 3075208, at *6 (N.D. Tex. Sept. 25, 2009) (finding that under the Commission's CLEC access rules, the Commission did not intend to allow "unnecessary intermediate LECs demanding payment from IXCs. The FCC surely did not intend to require IXCs to pay LECs who are merely profiting from the FCC's rulings. . . . A company that provides no additional value to anyone may not unnecessarily insert itself into the chain of carriers . . . .").

[redacted] **[[END CONFIDENTIAL]]** That is precisely what has occurred here. As explained in the Complaint, because of the Commission's access rules, CLECs have a "bottleneck monopoly" over their access services, and the Commission has determined that intermediate carriers, such as INS, have the ability to exploit this bottleneck monopoly when they agree to originate or terminate traffic from CLECs. *See* AT&T Complaint, Section II.B; *see also In re Access Charge Reform*, 19 FCC Rcd. 9108, ¶ 17 (2004) ("[A]n IXC may have no choice but to accept traffic from an intermediate" carrier.).

[[BEGIN CONFIDENTIAL]] [redacted]

[26] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

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[27] Since 2005, the use of the public internet to transport voice telephone traffic has grown significantly, which has enabled numerous entities to offer third-party transport services that could potentially provide an alternative to INS's transport service in Iowa. *See* Habiak Decl. ¶ 13. However, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[28] *See* Habiak Decl. ¶¶ 22–23; *see also* Ex. 52, Supplemental Brief of AT&T Corp., *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-16-MD-001, at 4–10, App. A (filed Jan. 10, 2017) ("AT&T Supp. Br."). **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

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C. None of INS's Positions Regarding the Applicability of CEA Service to Access Stimulation Traffic Has Merit.

Both in the District Court litigation that prompted the referral that is now before the Commission, as well as in its opposition to the forbearance petition that AT&T recently filed with the Commission, INS has contended that the Commission's existing rulings, along with INS's tariff, have always compelled long distance carriers like AT&T to use INS's CEA service to carry traffic to and from all LECs that elect to participate in INS's CEA services.[31] As shown below, none of those arguments has any merit.

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[29] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[30] *See also, e.g.*, *Panamsat Corp. v. Comsat Corp.-Comsat World Sys.*, 12 FCC Rcd. 6952, ¶ 16 (1997) ("The Commission has determined that predatory pricing is 'unjust and unreasonable' and therefore prohibited by Section 201(b) of the Act.").

[31] *See, e.g.*, Ex. 39, Plaintiff's Brief in Support of its Motion to Dismiss Counterclaims Under Rule 12(B)(6), *Iowa Network Services v. AT&T Corp.,* No. 14-3439, at 5 (D.N.J. Aug. 22, 2014) ("INS Motion to Dismiss"); Ex. 38, Iowa Network Services, Inc. Motion for Partial Summary Denial of AT&T Services, Inc.'s Forbearance Petition, *In re Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges,* WC Docket No. 16-363, at 9–10 (filed Dec. 2, 2016) ("INS Forbearance Opp.").

1. INS's Reliance on the Commission's Prior Public Interest Determinations Regarding CEA Service is Misplaced.

In the underlying District Court litigation, INS took the position that AT&T's claims regarding the unlawfulness of INS's billing of CEA rates on access stimulation traffic are barred "because INS' current interconnection arrangements and CEA participation agreements are based on the public interest standards of 47 U.S.C. §§ 201(a) and 214(a), as they have been interpreted by the FCC and affirmed by courts." Ex. 39, INS Motion to Dismiss, at 5.

There is no merit to INS's position. Indeed, it is based on an entirely false premise, *i.e.*, that the Commission's decisions approving the provision of CEA service in the 1980s somehow endorsed INS's current billing of CEA rates in connection with access stimulation traffic. That simply did not occur. As explained in detail above, the Commission approved the provision of CEA service for a very narrow purpose, namely to facilitate the provision of "equal access" service for the customers of small, rural LECs that did not have sufficient long distance traffic to justify the provision of equal access on anything other than a centralized basis. *See supra* Part I.A.1; *see also* AT&T Complaint, Section I.A. At no point did the Commission ever authorize INS or any other CEA provider to charge CEA rates in connection with access stimulation traffic, and none of the Commission's orders or the court decisions cited by INS even remotely suggests that the Commission did so. To the contrary, all of those decisions pre-date the advent of access stimulation.[32] Moreover, the Commission made clear in its initial decision approving CEA service that it was not providing any type of blanket authorization and that each case would be considered based on its specific facts and circumstances.[33]

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[32] *See* Ex. 39, INS Motion to Dismiss, at 7–11 (discussing the Commission's decisions approving CEA service).

[33] *See, e.g.*, *Indiana Switch C.C.B. Order* ¶ 23 ("Each future application will be examined independently on the unique facts and issues presented therein.").

Given that the Commission's prior public interest determinations did not authorize the billing of CEA rates in connection with access stimulation traffic, INS's reliance on those determinations is wholly misplaced.[34]

2. INS's § 201(a) Claim Is Erroneous.

In the District Court litigation, INS also sought to justify its billing of CEA rates on the basis of Section 201(a) of the Act, which requires carriers "upon reasonable request therefor; and in accordance with the orders of the Commission . . . to establish physical connections with other carriers, to establish through routes and charges applicable thereto . . . and to establish and provide facilities and regulations for operating such through routes." 47 U.S.C. § 201(a). According to INS, this provision effectively requires AT&T to pay the CEA rates that INS billed for the access stimulation traffic.[35]

However, INS's argument fails for the same reasons as its prior contention: the Commission has never found that long distance carriers are obligated under Section 201(a) to complete access stimulation traffic to CLECs using CEA services provided by INS (or any other

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[34] INS also claimed that the AT&T's claims were "barred by the Hobbs Act, 28 U.S.C.§ 2342(1), because they collaterally attack the FCC orders deciding that interconnection and transport, pursuant to the CEA participation agreements with LECs, best serve the public interest standards of sections 201(a) and 214(a)." Ex. 39, INS Motion to Dismiss, at 5–6. This argument is flawed for the same reasons (and also because the Hobbs Act has no application in this Commission proceeding). Moreover, even assuming, *arguendo*, that the Commission had previously concluded that INS's "interconnection arrangements and CEA participation agreements" were once consistent with the public interest, Ex. 39, INS Motion to Dismiss, at 5, and that that finding could be extended to allow INS to charge its CEA rates on access stimulation traffic, the Commission would be compelled to reach a different conclusion based on the record here, which shows that such charges are anti-competitive and harm the public interest. *See NCTA*, 567 F.3d at 667 (an "agency is free to change its mind so long as it supplies a reasoned analysis," and the Commission properly explained why it was prohibiting exclusive agreements by cable operators in multi-unit dwelling, even though it had not done so four years earlier) (quotations omitted).

[35] *See* Ex. 39, INS Motion to Dismiss, at 17–19; *see also* Ex. 61, INS's Reply to AT&T's Opposition to Motion to Dismiss Counterclaims, *Iowa Network Servs. v. AT&T Corp.*, No. 14-3439, at 2 (D.N.J. Oct. 10, 2014) ("INS Reply").

carrier). Indeed, because the Commission has never made any such findings, Section 201(a) favors AT&T, not INS, and precludes the Commission from retroactively requiring AT&T to use INS as a "through route" to reach CLECs engaged in access stimulation.[36] As explained above, the Commission's 1980s CEA decisions do not represent any public interest determination that use of INS's CEA service is "necessary or desirable" for transporting access stimulation traffic to CLECs. 47 U.S.C. § 201(a). Neither CLECs nor access stimulation even existed when the Commission issued those decisions. In short, as previously explained, the Commission's orders authorizing the provision of CEA service do not extend to the billing of CEA rates in connection with access stimulation traffic. *See supra* Part I.C.1.[37]

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[36] *See AT&T Corp. v. FCC*, 292 F.3d 808, 811–13 (D.C. Cir. 2002) ("[I]f the FCC wants to compel AT&T to establish a through route with another carrier, then the FCC must follow the procedures" in § 201(a)). Under Section 201(a), the Commission can mandate a "through route" using direct "physical connections with other carriers" only (i) "*after* opportunity for hearing" and (ii) if the Commission finds such action "necessary or desirable in the public interest." 47 U.S.C. § 201(a) (emphasis added). The first clause of Section 201(a), relating to a "reasonable request" for service from a carrier, relates to a carrier's obligations to its own customers' requests, not to a carrier's duty to connect to another carrier. The first clause has no application here, because no AT&T customer has requested that its calls be transmitted *via INS* (and, in any event, such a request would not be reasonable because of the higher costs associated with INS's services, *see* AT&T Complaint, Section II.A.2).

[37] Likewise, the scope of INS's obligations under the Act to interconnect with Great Lakes and other access stimulating CLECs has no bearing of the issues currently before the Commission. Even if INS had such obligations, those obligations would not also require **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Nor would such obligations permit INS unlawfully to apply its CEA tariff rate to the transport of access stimulation traffic. To the extent INS wanted to transport this traffic and bill AT&T and other IXCs, it was obligated to file a new tariff (or negotiate a contract with the IXC) for such transport. *See Connect America Order* ¶ 812.

3. There Is No Merit to INS's Position that, By Adding Access Stimulating CLECs to its CEA Tariff, INS May Bill CEA Rates in Connection with These CLECs' Access Stimulation Traffic.

In an effort to overcome the fact that it did not amend its CEA tariff to encompass access stimulation traffic, INS pointed out to the District Court that Great Lakes and other access stimulating CLECs were added to and identified as "participating carriers" in INS's CEA tariff. *See* Ex. 61, INS Reply, at 3. This argument lacks merit, because the addition of these carriers did not expand the limited scope of INS's CEA tariff.

According to INS, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** "the LEC's name is added to section 9 of the *CEA* tariff, the LEC's traffic is homed upon the CEA network, and AT&T is required by sections 6.7.7 and 8 of the CEA tariff to interconnect with the CEA network for that LEC's calls." Ex. 61, INS Reply, at 3 (emphasis added). The addition of the name of one or more access stimulating CLECs, however, does not expand the scope of INS's "CEA tariff" or dictate that the tariff applies to all of "that LEC's calls." As explained above, every page of INS's tariff is identified as applying only to INS's provision of CEA service, and given that the Commission's decisions set forth a very limited meaning of CEA service, INS's tariff cannot be read to apply to the participating LECs' access stimulation traffic.[38] In short, the

[38] The two sections of the CEA tariff cited by INS do not suggest otherwise. Section 6.7.7 of the CEA tariff merely discusses how "Access Minutes" will be measured, and nothing in that section can be read to suggest that the measured minutes would include anything more than minutes associated with CEA service (since that is the term appearing directly above Section 6.7.7). Ex. 3, INAD Tariff F.C.C. No. 1 § 6.7.7. Section 8 of the CEA tariff is even less helpful to INS and confirms AT&T's reading of the INS tariff, because it provides explicitly that "Centralized Equal Access Service" is the service that INS will make available when routing calls to the LECs listed in Section 9 of INS's CEA Tariff. *Id.* § 8.1.

additions of Great Lakes or other CLECs to INS's CEA tariff did not expand or otherwise alter the definition of CEA service.

Given the significant differences between legitimate CEA service and access stimulation traffic, INS could not alter the scope of its CEA tariff to encompass access stimulation traffic merely by adding the names of certain CLECs in its tariff. Instead, it was incumbent on INS to address the limited scope of its CEA tariff directly, either by adding a definition of CEA service to its CEA tariff that encompassed access stimulation traffic (and conforming the rate), or by seeking authority from the Commission to bill CEA rates on such traffic.[39] Having done neither, it cannot now rely on the mere addition of CLEC names to its tariff, especially given the fact INS did not indicate that any of these entities were, in fact, engaged in access stimulation.

4. INS's Assertion that the "Mandatory Use Requirement" Once Associated with CEA Traffic Applies to CLECs or to Access Stimulation Traffic Is Wrong.

Before the District Court and in other Commission proceedings, INS has contended that AT&T and other long distance carriers must use INS's network to transport traffic to access stimulating CLECs because of a purported "mandatory use requirement" that was associated with legitimate CEA traffic. *See* Ex. 38, INS Forbearance Opp., at 9–10; Ex. 39, INS Motion to Dismiss, at 2, 5–18; Ex. 61, INS Reply, at 1–6. INS's position is entirely lacking in merit.

The CEA service that the Commission approved in 1988 was limited to the 136 small rural LECs identified in INS's application. As to traffic to and from those 136 carriers, the Commission

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[39] **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]** Ex. 11, Shlanta Dep. at 203:10–19

considered an objection by Northwestern Bell ("NWB") that neither NWB (as a provider of intraLATA toll service) nor other long distance carriers should be compelled to use INS as a transport provider on traffic to and from the 136 small rural LECs. *See INS Order* ¶¶ 28–33.[40] The Commission concluded that, as to terminating toll traffic, a requirement that long distance carriers use INS's centralized switch to route traffic to and from the 136 small, rural LECs "does not appear to be unlawful or unreasonable." *Id.* ¶ 33.[41] Based on this language, INS contends that the Commission has necessarily concluded that long distance carriers today must use INS to transport traffic to any LECs (including CLECs engaged in access stimulation) that execute a traffic agreement with INS. Ex. 38, INS Forbearance Opp., at 9–10.

There is substantial doubt that this so-called "mandatory use requirement" is still good law today in any form, even as to the 136 small rural LECs that existed when the Commission authorized INS to provide CEA service to and from those LECs. The Commission cut back on any such requirement just two years later in its *MIEAC Order*, where it determined that IXCs should have the "option" of using either a CEA service, U.S. West's service, or an IXC's own trunks. Ex. 12, *MIEAC Order* ¶ 12. Congress then enacted the Telecommunications Act of 1996, which opened all local markets to competition. As such, the very notion that a customer must use a particular carrier's services is antithetical to the purposes of the Telecommunications Act, which

[40] As to NWB's intraLATA toll traffic, the Commission noted that because INS assumed that charges on intrastate, intraLATA toll traffic will recover "the majority of" the network costs of INS, the Iowa Utilities Board would need to address that issue, and that, if INS's assumption were inaccurate, then the Commission would "need to review" a revised proposal. *Id.* ¶ 32.

[41] The Commission's logic was that, in the 1980s, "the normal way access [wa]s provided" was via a local exchange company with a monopoly, and that, in such circumstances, precluding NWB from providing intermediate transport service, in competition with INS, on traffic to and from the 136 did not "diffe[r] substantially" from then-current practice. *INS Order* ¶ 33.

was enacted to end any such *de jure* or *de facto* monopolies.[42] In light of the 1996 Act, which prohibited the monopolies over access services that the Commission's 1988 order assumed as the "normal" way that access must be provided, *INS Order* ¶ 33, a very strong argument exists that there is no "mandatory use requirement" in effect in any form.

At the very least, however, INS has no credible claim that a "mandatory use requirement" adopted in 1998 to apply to traffic associated with 136 small, rural LECs has somehow since been *extended* beyond those LECs to apply to CLECs, particularly to CLECs engaged in access stimulation. That the Commission would have imposed a "mandatory use requirement" on a class of carriers that was not yet even in existence (and that would not need assistance in providing equal access service) makes no sense. Further, the weakness of INS's claim in this regard is made manifest by the fact that none of the "expected benefits" of CEA service arise in connection with access stimulation traffic.[43]

INS's position regarding the applicability of the "mandatory use requirement" also conflicts with the Commission's decisions regarding CLEC provision of switched access service. In *PrairieWave*, the Commission unambiguously determined that a CLEC has a duty to "permit an IXC to install direct trunking from the IXC's point of presence to the [C]LEC's end office,

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[42] *See, e.g.*, *Telecommunications Act of 1996*, FCC, https://www.fcc.gov/general/telecommunications-act-1996 ("The goal of this new law [the '96 Act] is to let anyone enter any communications business – to let any communications business compete in any market against any other.") (last visited June 3, 2017).

[43] INS's position that the Commission's rules have always required all traffic to and from CLECs operating in Iowa to be routed through INS is not consistent with the facts. As explained in the Habiak Declaration, there are multiple CLECs operating in Iowa (and other CEA states) that interconnect to IXCs via tandems not owned by INS. Habiak Decl. ¶ 30. Under INS's view, however, all of those arrangements, which have existed for years, would be unlawful. Rather than assume these CLECs have been operating in violation of the law since 1996, it is far more reasonable to conclude that INS is wrong in claiming that the Commission created a "mandatory use requirement" for traffic routed in Iowa to CLECs.

thereby bypassing any tandem function."[44] Further, in the *CLEC Access Order*, the Commission made clear that CLECs should not be able to exploit their bottleneck monopolies by conditioning access on the payment of excessive rates.[45] To prevent such conduct, the Commission adopted benchmarking rules, which the Commission further adjusted in the *Connect America Order* to deal with the specific harms resulting from access stimulation. *Connect America Order* ¶¶ 656–735. Extending any so-called "mandatory use requirement" to reach access stimulation traffic would completely undercut these initiatives. Indeed, any such requirement would improperly sanction the above-market pricing umbrella that INS has created (*see* Complaint, Section II.B), which is the very situation that the Commission's rules were designed to prevent.

INS's position regarding the applicability of the "mandatory use requirement" also cannot be squared with the Commission's decision in *Indiana Switch*. In that case, the Commission established that CEA arrangements are only permissible to the extent that they provide benefits to subscribers, indicating that a "like proposal [that] significantly increases IXCs' operating costs without significant increases in service choices or benefits to subscribers" would not be approved. *In re the Application of Indiana Switch Access Div.*, 1 FCC Rcd. 634, ¶ 5 (1986) ("*Indiana Switch Review Order*"). Similarly, the Commission made clear that CEA arrangements do not justify

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[44] *In re Access Charge Reform PrairieWave Telecomms., Inc.*, 23 FCC Rcd. 2556, ¶ 27 (2008) ("*PrairieWave*"). Further, although the Commission did not reject INS's mandatory use proposal, a key basis for that decision was the belief that the rural LEC participants in INS "are not subject to MFJ requirements that they allow the interexchange carrier to choose the point of connection." *INS Order* ¶ 33. That rationale is not only inconsistent with the *Indiana Switch CCB Order*, which the Commission recently re-affirmed in *Alpine*, but it also has absolutely no application to access stimulating CLECs, which, for the reasons explained here and in the pending referral in *Great Lakes v. AT&T*, in fact have a duty to direct connect with IXCs.

[45] *In re Access Charge Reform*, 16 FCC Rcd. 9923, ¶¶ 2, 30 (2001) ("*CLEC Access Order*").

"unreasonabl[e]" points of interconnection and do not bestow on LECs (or their CEA provider affiliates) "unbounded authority" over the point of interconnection.[46]

Finally, it is impossible to reconcile INS's position regarding the "mandatory use requirement" with its recent tariff filing, which offered a new and different contract tariff service specifically targeted at terminating traffic routed to CLECs engaged in access stimulation. *See supra* note 1. It cannot be the law that IXCs and other carriers are prohibited from bypassing INS's network but that INS itself can offer a different service that has that effect. Indeed, by proposing to offer its new contract service, INS has effectively undercut its arguments regarding the continuing existence of a "mandatory use requirement."

II. INS HAS UNLAWFULLY FILED A TARIFF WITH RATES THAT VIOLATE THE COMMISSION'S RATE CAP AND RATE PARITY RULES.

Even though INS did not, and could not, lawfully provide or bill for its tariffed CEA service in connection with the large volumes of traffic INS routes to CLECs engaged in access stimulation, INS has continued to tariff its CEA service and has provided CEA service to AT&T on a small portion of INS's overall traffic that is not related to access stimulation – specifically, about **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** of the traffic. *See* Habiak Decl. ¶ 16. As to this traffic, INS's charges to AT&T are also unlawful because they violate the Commission's 2011 rate cap and rate parity rules.

As explained in the Complaint (*see* Section III), INS is unquestionably subject to the Commission's transitional rules, including the rate cap and rate parity rules, because it is a LEC that provides "interstate or intrastate exchange access" services to other networks, including

[46] *Indiana Switch Review Order* ¶ 5 ("[O]ur decision permitting [the CEA] to proceed should not be interpreted as unbounded authority on the part of [LECs], or their affiliates, to determine points of interconnection with IXCs.").

AT&T's network. *See* 47 C.F.R. § 51.901(b). Although there may be some question as to what type of LEC INS is, there is no doubt that INS is a LEC. INS falls under the Communication Act's definition of "LEC," as well as the definition of that term set forth in the Commission's regulations. *See* 47 U.S.C. § 153(32) (a LEC is an entity (other than a CMRS provider) that is "engaged in the provision of telephone exchange service *or exchange access*" (emphasis added)); 47 C.F.R. § 51.5 ("A LEC is any [entity] . . . engaged in the provision of telephone exchange service *or exchange access*." (emphasis added)).[47]

Despite being subject to the Commission's rate cap and rate parity rules, INS has violated both rules. *First*, INS's tariffed rate of $0.00896 per minute for interstate CEA service exceeds the Commission's applicable rate cap ($0.00819 per minute). *See* 47 C.F.R. § 51.905(b) (LECs "are required to tariff rates no higher than the default transitional rate[]," *i.e.*, the capped rate). INS's tariffs putting that rate in place were therefore not properly filed and never became effective, as explained below. *Second*, INS's state CEA tariff violates the Commission's rate parity rules because it did not reduce its intrastate rates to be at parity with its capped interstate rates, which was required to be completed by July 1, 2013. *See* Complaint, Section II.B.3; *see also Connect America Order* ¶¶ 35, 804 & Figure 9.

As a result of these deficiencies, INS is in violation of the Commission's rules, as well as Sections 203 and 201(b) of the Act. Further, neither of the defenses raised by INS in the District Court litigation justifies its unlawful conduct.

[47] Moreover, INS has previously represented itself to be a LEC before the Commission, and the Commission has in turn consistently regulated INS as a LEC. *See* AT&T Complaint, Section III.B.

A. INS's Assertions That It Is Neither a "Rate-of-Return Carrier" nor a "Competitive Local Exchange Carrier" Under the Commission's Rate Cap and Rate Parity Rules Lack Merit.

INS has claimed that it is not subject to the Commission's rate cap and rate parity rules because it is an intermediate carrier providing CEA service, and is neither a "Rate-of-Return Carrier" nor a "Competitive Local Exchange Carrier" within the meaning of the Commission's rate cap and rate parity rules. These claims lack merit, and in any event, are beside the point. INS is unquestionably a LEC under Section 51.5 of the Commission's rules.[48] As explained below, because the Commission's rate cap and rate parity rules apply to any LEC, *see, e.g.*, 47 C.F.R. §§ 51.901(b), 51.903(a), 51.905(b), INS is subject to the rules regardless of whether it is deemed to be a "Competitive Local Exchange Carrier" or a "Rate-of-Return Carrier."

Under the Commission's transition rules, which have been promulgated as Subpart J to Part 51 of the Commission's rules, every LEC is classified as one of three types: (i) a "Price Cap Carrier," *see* 47 C.F.R. §§ 51.903(f), 51.907; (ii) a "Rate-of-Return Carrier," *see id.* §§ 51.903(g), 51.909; or (iii) a "Competitive Local Exchange Carrier," *see id.* §§ 51.903(a), 51.911. Section 51.903 contains "Definitions" for each of these three types of LECs, and these definitions are applicable "[f]or purposes of" Subpart J of Part 51. Under the Subpart J definitions, a "Price Cap Carrier" is any LEC subject to the Commission's price cap rules.[49] A "Rate-of-Return Carrier" is

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[48] *See* AT&T Complaint, Section III.B. Under Section 51.5, which contains the "[t]erms and definitions" applicable to Part 51 of the Commission's rules, a "Local Exchange Carrier (LEC)" is defined as "*any person that is engaged in the provision of* telephone exchange service or *exchange access*." 47 C.F.R. § 51.5 (emphasis added).

[49] Specifically, a "Price Cap Carrier" is defined in Section 51.903(f) as having "the same meaning as that term is defined in §61.3(aa) of this chapter." Under Section 61.3, a "Price Cap LEC" is a "local exchange carrier subject to regulation pursuant to §§ 61.41 through 61.49." 47 C.F.R. § 61.3(bb).

an incumbent LEC not subject to price cap regulation.[50] A "Competitive Local Exchange Carrier" serves as a catch-all and includes "*any local exchange carrier*, as defined in § 51.5, that is not an incumbent local exchange carrier." *Id.* § 51.903(a) (emphasis added).

Because INS is not a "Price Cap Carrier," but is a LEC, it necessarily follows that it is either a "Rate-of-Return Carrier" or a "Competitive Local Exchange Carrier" within the meaning of Part 51. In the District Court litigation, INS took the position that it was not a "Rate-of-Return Carrier" for purposes of Part 51 because it was not an "incumbent LEC" within the meaning of Section 51.5; INS claimed it was not an incumbent LEC because it did not provide "telephone exchange service" as of the date of enactment of the Telecommunications Act.[51] However, INS fits squarely within the common understanding of the term "incumbent local exchange carrier." It is unquestionably a LEC, *see* AT&T Complaint, Section III.B, and it is also reasonably classified as an "incumbent," having come into existence well before the enactment of the 1996 Act. Further, INS was created and is owned by incumbent LECs and also was organized for the express purpose of providing an exchange access service on their behalf. In addition, INS can reasonably be encompassed with the term "Rate-of-Return Carrier" because: (i) INS has always been regulated

[50] Specifically, a "Rate-of-Return Carrier" is defined in Section 51.903(g) as "any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(aa) of this chapter, but only with respect to the territory in which it operates as an incumbent local exchange carrier." 47 C.F.R. § 51.903(g).

[51] Ex. 39, INS Motion to Dismiss, at 31–36.

on a rate-of-return basis,[52] and (ii) INS has represented itself as a rate-of-return carrier in at least one regulatory filing made with other centralized equal access providers.[53]

But even if the Commission were to conclude that INS is not a "Rate-of-Return Carrier" for purposes of Part 51, all that would mean is that INS is necessarily a "Competitive Local Exchange Carrier" under those same rules. Section 51.903(a) provides that a "Competitive Local Exchange Carrier is "*any local exchange carrier*, as defined in § 51.5, *that is not an incumbent local exchange carrier*." 47 C.F.R. § 51.903(a) (emphasis added). As explained in AT&T's Complaint, because INS provides exchange access, it is a LEC under both the statutory definition (47 U.S.C. § 153(32)) and the definition in Section 51.5 of the Commission's rules. *See* AT&T Complaint, Section III.B. Consequently, even assuming, *arguendo*, that INS is not an incumbent LEC under Section 51.5 or a "Rate-of-Return Carrier" within the meaning of Section 51.903(g), it must by definition be a "Competitive Local Exchange Carrier" for such purposes.

As relevant here, the Commission's rate cap and the rate parity rules apply in the same way to both "Rate-of-Return Carriers" and "Competitive Local Exchange Carriers." *See Connect*

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[52] When the Commission first authorized INS to provide services, rate-of-return regulation was the only way to regulate dominant carriers like INS. *See WorldCom, Inc. v. FCC*, 238 F.3d 449, 453 (D.C. Cir. 2001) ("For years the FCC imposed traditional rate of return regulation on the LECs."). Moreover, INS has consistently filed rates for its access services pursuant to Rule 61.38 of the Commission's rules, 47 C.F.R. § 61.38, which is a rule that allows certain rate-of-return incumbent local exchange carriers to file access service tariffs on a streamlined basis. *See In re FCC 11-161*, 753 F.3d 1015, 1145 (10th Cir. 2014) (Bacharach, J., concurring opinion) (explaining that section 61.38 "called for incumbent LECs to file tariffs supported by cost-of-service data"); *In re July 1, 2014 Annual Access Charge Tariff Filings*, 29 FCC Rcd. 3133, 3133 & n.2 (2014) (establishing "procedures for . . . filing of annual access charge tariffs . . . for . . . rate of return ILECs subject to sections 61.38 and 61.39" and noting that 47 C.F.R § 61.38 applies to "rate of return carriers that file tariffs based on projected costs and demand").

[53] *See* Ex. 62, Comments of the Equal Access Service Providers, *In re High-Cost Universal Serv. Support, et al.*, WC Docket No. 05-337, at 2 (filed Nov. 26, 2008) ("The CEA providers are regulated on a rate-of-return basis . . . .").

America Order ¶ 801, Table 9.[54] Accordingly, for purposes of determining INS's liability under AT&T's Complaint, the Commission need only decide that INS is a LEC and that it is therefore subject to, and has violated, the Commission's rate cap and rate parity rules.

B. INS's Tariffs Did Not Become "Deemed Lawful"; Because INS Was Prohibited from Filing Tariffs that Violate the Commission's Rules, INS's Tariffs are Unlawful and Void.

INS's other primary defense to its violation of the Commission's rate cap and rate parity rules is that its interstate access tariffs became "deemed lawful" pursuant to Section 204(a)(3) of the Act, and that, even if the tariffs were unlawful when filed, the tariffs cannot be found unlawful retroactively. INS's argument in this regard lacks merit.

To start, INS misinterprets the "deemed lawful" doctrine. That doctrine does not provide LECs with an absolute immunity defense that they can invoke whenever they are accused of having violated a provision of the Act or the Commission's rules. For example, the "deemed lawful" doctrine does not provide any defense to a carrier's violation of the terms of its tariff, nor does it apply when (as here, *see* AT&T Complaint, Section II) a LEC attempts to bill for a service not

[54] As to the Commission's rate cap rule, the only difference is that for CLECs that benchmark their rates to price cap LECs, all switched access rate elements (both interstate and intrastate) are capped; whereas for Rate of Return Carriers, the rate cap does not apply to intrastate originating access rates. *See Connect America Order* ¶ 801, Table 9. INS has raised its interstate switched access rates above the rate caps; its intrastate rate violates the rate parity rule, but that rule applies the same way regardless of how INS is classified in this proceeding. *See id.*

encompassed by its tariff.[55] Likewise, because the "deemed lawful" doctrine concerns rates or terms that LECs have filed in *tariffs*, the doctrine cannot serve as a defense to claims – like the ones AT&T allege here – that a LEC has engaged in an unreasonable practice. Further, even for rates and terms in a tariff that is "deemed lawful," a LEC may be liable retroactively when it "furtively employs improper accounting techniques in a tariff filing, thereby concealing potential rate of return violations." *ACS*, 290 F.3d at 413.

Additionally, nothing in Section 204(a)(3) allows a LEC to file a rate, or to add a term or condition to its tariff, that the Commission has already found to be unlawful, and then argue that, if the revised tariff is not suspended by the Commission, the new rate, term, or condition was somehow transformed into a "deemed lawful" rate, term, or condition. Allowing a carrier to flout the requirements of the Commission's regulations in this manner would enable that carrier, in effect, to rewrite the law. Nothing in the text of Section 204(a)(3) gives INS such a right, nor has the Commission or any court interpreted Section 204(a)(3) as affording carriers such a right.

INS, like every other LEC, must comply with the Commission's rate cap rule, which caps all interstate rates for switched access service.[56] In fact, the regulations provide that "LECs who

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[55] *See* 47 U.S.C. § 203(c) (prohibiting charges that violate a tariff); *AT&T Corp. v. Beehive Tel. Co.*, No. 08-cv-941, 2010 WL 376668, at *23 (D. Utah Jan. 26, 2010) (stating that section 204(a)(3) could not help a LEC where, as here, "it violated its 'deemed lawful' tariff by charging a rate three times that authorized by the tariff"); Ex. 63, Brief for *Amicus Curiae* Federal Communications Commission, *Paetec Comm'cns, Inc. v. MCI Comm'cns Servs., Inc.*, Nos. 11-2268 & 11-1204, at 29 (3d Cir. Mar. 14, 2012) ("*PaeTec Amicus Brief*") ("If a carrier fails to comply with the terms of its own tariff, it is subject to liability under 47 U.S.C. § 203(c)."); *Qwest Commc'ns Corp. v. Farmers & Merchants Mutual Tel. Co.*, 24 FCC Rcd. 14801, ¶ 26 n.98 (2009) ("*Qwest v. Farmers III*") ("The tariffed rates are deemed lawful only to the extent that the tariff actually applies . . . .").

[56] 47 C.F.R. § 51.909(a)(1) (a rate-of-return carrier "*shall . . . cap* the rates" for access services at levels existing in 2011); *id.* § 51.911(a)(1) ("no . . . [CLEC] may increase the rate" for certain access services). *See Qwest Commc'ns Co. v. N. Valley Commc'ns, LLC*, 26 FCC Rcd. 8332, ¶ 11 (2011) (LECs "must comply not only with the [Communications] Act, but also with the Commission's rules and orders.").

are otherwise required to file tariffs [as INS is] ***are required to tariff rates no higher than*** the default transitional rates . . . ." 47 C.F.R. 51.905(b) (emphasis added). By using such mandatory language, the Commission's regulations not only prohibit INS from charging above-cap rates, but also from filing a tariff containing above-cap rates. *Id.* Accordingly, in 2013, when INS filed its tariff revisions raising its CEA rate above the rate cap, INS was, at that moment, in violation of the Commission's rules. The import of INS's argument, however, is that the Commission's rate cap was effectively amended 15 days later because INS's unlawful tariff was not immediately suspended. But that has the regulatory regime backwards. It is not the case that a carrier's tariffs can substantively amend the Commission's regulations or the Act. Instead, "tariffs still must comply with the applicable statutory and regulatory requirements," and "[t]hose that do not may be declared invalid." *Global NAPS*, 247 F.3d at 260.[57]

The Commission, in virtually an identical context, has explained that a tariff filed with rates that exceed an FCC-specified benchmark does not become "deemed lawful" simply because it was not suspended at the timing it was filed.[58] In the *PaeTec* case, the Third Circuit asked the Commission to address the following question: "Whether a CLEC's switched access tariff, filed on a 'streamlined' basis pursuant to 47 U.S.C. § 204(a)(3) but subsequently found to violate the FCC's benchmark, can enjoy 'deemed lawful' status?" Ex. 63, *PaeTec Amicus Brief*, at 2. The Commission answered this question "no," and explained that where a "carrier is *prohibited* from filing a tariff[,] any attempt to do so would violate the FCC's rules and render the prohibited tariff *void ab initio* if filed with the Commission." *Id.* at 2, 25.

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[57] *See Global NAPS*, 247 F.3d at 260 (When a tariff "is so plainly defective as to be a legal nullity[, it] may be declared retroactively invalid—*void ab initio*—in order to ensure that an injustice is not worked on the affected customers.").

[58] Ex. 63, *PaeTec Amicus Brief*, at 2, 25–28.

The Commission's reasoning in *PaeTec* is equally applicable here. Like in *PaeTec*, INS filed a tariff with rates that violate an established Commission benchmark (*i.e.*, the Commission's rate cap and rate parity rules). In both cases, the Commission's regulations prohibited above-cap rates and required the filing of tariffs that complied with the applicable rate caps. As the Commission explained in *PaeTec*, a tariff filed in violation of a Commission-established benchmark rate "cannot benefit from 'deemed lawful' status pursuant to section 204(a)(3) of the Act." Ex. 63, *PaeTec Amicus Brief*, at 25. The Commission's interpretation of Section 204(a)(3) also avoids practical problems and ensures that consumers are protected from unreasonably high rates. As the Commission explained, "prohibiting . . . presumptively unreasonable rates from being tariffed in the first instance better serves the public interest by according IXCs (and, ultimately, consumers) more protection from unreasonably high interstate access rates than attempting to identify such unreasonable rates on an *ad hoc* basis after the tariffs are filed." *Id.* at 27–28.[59]

Moreover, courts have agreed with the Commission's view that carriers cannot use Section 204(a)(3) to effectuate a change in substantive law. For example, in *PaeTec Commc'ns, Inc. v. Commpartners, LLC*, the court found that a carrier's "tariff must give way," because "a tariff cannot be inconsistent with the statutory framework pursuant to which it is promulgated." No. 08-0397 (JR), 2010 WL 1767193, at *4 (D.D.C. Feb. 18, 2010). The court further noted that "[t]o

[59] The Commission also explained that it "is not possible, as a practical matter, for the FCC to examine each of the hundreds of CLEC access tariffs filed with the agency within the 15 days before those tariffs go into effect." *Id.* at 27. Rather than attempt to examine each of the individual tariffs, it is reasonable for the Commission to set a rate cap (or benchmark) and then prohibit the filing of tariffs with rates above that cap (or benchmark). *Cf. In re Permian Basin Area Rate Cases*, 390 U.S. 747, 768–90 (1968) (neither the Constitution nor the statutory "just and reasonable" standard "forbid the imposition, in appropriate circumstances, of maximum prices," nor do they "prohibit the determination of rates through group or class proceedings"). This is exactly what the Commission did here. *See* 47 C.F.R. § 51.909(a)(1); *id.* § 51.911(a)(1); *see also* 47 C.F.R. 51.905(b); *Connect America Order* ¶¶ 739, 799–801 & Figure 9.

treat tariffs as inviolable would create incentives to bury within tariffs provisions that expand their rates beyond statutory allowance in the hope that the FCC will not notice." *Id.* Here, if INS were to be permitted to violate the Commission's rate caps by relying on its Section 204(a)(3) claim, it could rewrite the Commission's regulations. Both the Commission and the courts have found that this is not permitted.[60]

Based on the foregoing, it is quite clear that INS was prohibited from filing a tariff with rates above the Commission's rate cap rules. Therefore, because INS's tariff was not lawfully filed, it could never become "deemed lawful," even if the filing procedures in Section 204(a)(3) were followed and even though the tariff was not suspended by the Commission. *Cf.* Ex. 63, *PaeTec Amicus Brief*, at 21–24 (a tariff that did not comply with Commission rules requiring 15 days of notice did not become "deemed lawful"). Likewise, because the Commission's rate parity rules required INS to reduce its intrastate rates over time, when INS failed to revise its intrastate tariffs to reduce its intrastate rates, those tariffs also became unlawful and void.[61]

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[60] The cases INS relied upon in District Court did not involve tariffs (like INS's tariff) that were unlawful when filed, but rather involved carriers filing tariffs with rates that the Commission had not previously reviewed or that did not violate an existing rate cap. *See TRT Telecomms. Corp. v. FCC*, 857 F.2d 1535, 1545–47 (D.C. Cir. 1988) (the Act generally has a system of "carrier-initiated" rates). For example, in *ACS*, the carrier was obliged to file rates "with a view to yielding a rate of return no greater than the Commission-prescribed maximum," but it was "virtually impossible to tell in advance just what rate of return a given rate may yield." 290 F.3d at 407, 413. As such, when the tariff in *ACS* was filed, it did not violate the existing FCC rules. Ultimately, based on additional evidence developed *after* the tariff was filed, the rates in the carrier's streamlined tariff caused it to exceed the prescribed rate of return. On these facts, the D.C. Circuit held that refunds were barred for the past periods the streamlined tariff was in effect because the rate therein was "deemed lawful." *ACS*, 290 F.3d at 411–12.

[61] *See* Ex. 64, Order, *In re GS Tex. Ventures, LLC Tariff F.C.C. No. 1*, FCC Rcd. 10541, ¶ 6 n.19 (2014) ("Tariffs that are lawful at the time that they are filed may subsequently become unlawful based on particular circumstances. For example, . . . the tariff filings of a competitive local exchange carrier (CLEC) could become void if the CLEC engages in access stimulation and exceeds the benchmark rate.").

Because INS's tariffs are not valid and are void, it had no right to collect from AT&T under those tariffs. *See Security Servs., Inc. v. K Mart Corp.*, 511 U.S. 431, 444 (1994) (Carriers may not collect fees "based on filed, but void, rates.").

III. INS HAS VIOLATED SECTIONS 201 AND 203 OF THE COMMUNICATIONS ACT BECAUSE IT IS ENGAGED IN ACCESS STIMULATION AND FAILED TO FILE REVISED TARIFFS.

As explained in the Complaint, INS has violated Sections 201 and 203 of the Communications Act because it is engaged in "access stimulation" under the Commission's rules. *See* Complaint, Section III; *see also* 47 C.F.R. § 61.3(bbb). Further, and in any event, even if INS is not engaged in access stimulation because it does not have an "access revenue sharing agreement" within the meaning of the Commission's rules, INS's conduct is an unreasonable practice under Section 201(b). INS facilitated access stimulation schemes by entering into traffic agreements to carry CLECs access stimulation traffic that would have been subject to the pricing requirements of the access stimulation rules [**[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

A. INS Is Engaged in Access Stimulation.

Under the Commission's rules, there are two "conditions" (or triggers) that "identify when an access stimulating LEC must refile its interstate access tariffs." *Connect America Order* ¶ 667. "The first condition is that the LEC has entered into an access revenue sharing agreement," and the "second condition is met where the LEC either has had a three-to-one interstate terminating-to-originating traffic ratio in a calendar month, or has had a greater than 100 percent increase in interstate originating and/or terminating switched access MOU in a month compared to the same month in the preceding year." *Id.*; *see* 47 C.F.R. § 61.3(bbb)(1)(i)-(ii).

INS Exceeds the 3:1 Trigger. There is no doubt that INS meets the second trigger. At least **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY**

CONFIDENTIAL]] of INS's traffic consists of access stimulation traffic,[62] and the access stimulation traffic at issue here (which involves chat and conferencing services) involves almost entirely terminating traffic. Habiak Decl. ¶ 20. According to INS's own records, since 2008, INS's ratio of terminating minutes to originating minutes has been well above the 3-to-1 trigger in every single year. Habiak Decl. ¶¶ 41–42; *see also* Ex. 2, INS Worksheet, at Aureon_02698-99 (setting forth originating and terminating minute data).

INS's own filings with the Commission also confirm that INS easily exceeds the 3-to-1 trigger. In INS's 2012 and 2013 annual rate filings, INS stated that its projected terminating minutes for the two periods combined would be about 5.75 billion minutes, while its originating minutes would be only about 506 million minutes – which is a ratio of about 11 terminating minutes for each originating minute.[63] As such, INS has "an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month." 47 C.F.R. § 61.3(bbb)(1)(ii). Moreover, because INS meets the 3-to-1 trigger, there is a "rebuttable presumption" that "revenue sharing is occurring and the LEC has violated the Commission's rules." *Connect America Order* ¶ 699.

INS Has a Revenue Sharing Agreement. Under the Commission's rules, an "access revenue sharing agreement" is defined as any agreement

> whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When

[62] *See* Ex. 2, INS Worksheet, at Aureon 02697-98 **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[63] *See* Ex. 19, INS 2012 Tariff Filing, Section 2, Schedule B (showing a projection of 3.092 billion terminating minutes from July 1, 2012 through June 30, 2013, and 247.8 million originating minutes for the same period); Ex. 20, INS 2013 Tariff Filing, Section 2, Schedule B (showing a projection of 2.666 billion terminating minutes from July 1, 2013 through June 30, 2013, and 259 million originating minutes for the same period).

> determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account[.]

47 C.F.R. § 61.3(bbb)(1)(i). Shortly after this rule became effective, the Commission issued additional guidance clarifying that "any arrangement between a LEC and another party, including affiliates, that *results in the generation of switched access traffic to the LEC* and *provides for the net payment of consideration of any kind*, whether fixed fee or otherwise, to the other party, including an affiliate, is considered to be 'based upon the billing or collection of access charges.'"[64]

INS's traffic agreements with access stimulating CLECs fall within the parameters of the Commission's rule regarding revenue sharing. Under its agreement with **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[64] *In re Connect Am. Fund*, 27 FCC Rcd. 605, ¶ 27 (W.C.B. 2012) ("*CAF Clarification Order*") (emphasis added).

[65] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[redacted]

[redacted] **[[END CONFIDENTIAL]]** *Cf. All American*, 28 FCC Rcd. 3477, ¶ 28 (describing similar access stimulation scheme in which one LEC purported to bill end office charges to IXCs, whereas another LEC billed transport charges as a "share" of "the terminating access profits"; because the first LEC "had a miraculous ability to generate enormous volumes," the second LEC gained "a lot of money" due to "access billables" that were "huge" via its transport charges (emphasis omitted)).

Finally, the fact that INS may not have any express revenue sharing agreements directly with FCPs does not alter the foregoing analysis.[66] When the Commission issued its access stimulation rules, it was aware of the fact that revenue sharing agreements existed between CLECs and FCPs. *See Connect America Order* ¶ 656. However, the Commission did not limit its definition of an access revenue sharing agreement to agreements between FCPs and CLECs that directly terminate traffic to such entities.[67] Indeed, in the *Connect America Order*, the Commission specifically took note that Hypercube, which is an intermediate wholesale provider of tandem services, "argue[d] that the Commission should exclude wholesale services from the

[66] Even though discovery is ongoing, the existing evidence supports the existence of an "implied" access revenue sharing agreement between INS and the FCP partners of access stimulating CLECS. *See* 47 C.F.R. § 61.3(bbb)(1)(i) (agreements may be express or implied). **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[67] Specifically, in defining "access revenue sharing agreement," the Commission did not limit its application to FCPs, or otherwise preclude a telecommunications carrier from being the "other party" to the agreement. To the contrary, the definition refers without limitation to an "other party," 47 C.F.R. § 61.3(bbb)(1)(i), and thus encompasses all possible entities – including CLECs that are themselves engaged in access stimulation.

definition of revenue sharing agreements." *Id.* ¶ 671. The Commission declined to do so, finding that position "unpersuasive." *Id.*

In short, INS's traffic agreements are part of an overall access stimulation scheme that benefits the access stimulating CLECs, their FCP partners, and INS at the expense of AT&T and its customers. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

B. INS Was Obligated but Failed to File a Revised Tariff Making Available a Direct Connection Service.

As explained in the Complaint, because INS has been engaged in access stimulation as defined in the Commission's rules, it was required to file revised tariffs when the Commission's new rules regarding access stimulation became effective in late 2011. *See* AT&T Complaint, Section IV.C.; *see also Connect America Order* ¶ 679 ("If a LEC meets both conditions of the definition [of access stimulation], it must file a revised tariff . . . ."). Moreover, under the Commission's rules, INS should have revised its tariff to make available a direct connection service at the same rate that service is offered by CenturyLink, the price cap ILEC in Iowa against which INS's rates are to be benchmarked.

[68] **[[BEGIN CONFIDENTIAL]]** [redacted] [[**END CONFIDENTIAL]]** the access revenue derived by those CLECs from IXCs as a result of access stimulation and their ability to share that revenue with their FCP partners was the direct result of their traffic agreements with INS. Indeed, without those agreements, access stimulation traffic could not have been routed to the access stimulating CLECs' switches, and there would have been no access revenue to share.

The Commission's rules which govern the revised access tariffs that INS should have filed depend on whether INS is viewed, for purposes of the Commission's access stimulation rules, as a rate-of-return ILEC or as a CLEC. *Compare Connect America Order* ¶¶ 688–91 (rules for CLECs), *with id.* ¶¶ 680–86 (rules for ILECs). For purposes of the Commission's access stimulation rules, it is most appropriate to treat INS as a "CLEC" for two reasons.

First, INS falls within the definition of CLEC set forth in the Commission's CLEC access rules, including its rules on CLEC access stimulation. *See* 47 C.F.R. § 61.26(a)(1), (g).[69] Under those rules, a "CLEC shall mean a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of 'incumbent local exchange carrier' in 47 U.S.C. 251(h)." *Id.* § 61.26(a)(1). INS clearly is providing "some" of the interstate exchange access services that are used to send traffic to the FCPs. Further, INS itself claims that it is not an ILEC within the meaning of Section 251 of the Act. As such, it necessarily falls within the definition of "CLEC" in Section 61.26(a)(1). In fact, the Commission has already held, and the D.C. Circuit has affirmed, that an intermediate transport provider that is not an ILEC falls within the definition of "CLEC" under these rules. *AT&T Servs. Inc. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd. 2586, ¶ 20 (2015), *aff'd in relevant part*, *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1002–03 (D.C. Cir. 2016).

Second, on the access stimulation traffic at issue here, INS is providing transport access services pursuant to an agreement and in conjunction with a CLEC. In effect, INS is acting as a surrogate, providing transport that a CLEC would be providing if INS were not involved in the

[69] Part 51 of the Commission's rules, as noted above, also contains definitions of "ILEC" and "CLEC." While those definitions are appropriate for use in determining how to apply the rate caps to INS, the definitions in Part 51 are not necessarily appropriate for use in the context of access stimulation.

call routing. As such, INS is, in effect, standing in the shoes of the access stimulating CLECs and, for this additional reason, should be viewed as a CLEC.

Because INS is providing service to a CLEC engaged in access stimulation, it is subject to the same rules that apply to that CLEC; consequently, INS's rates should be the same as the rates that the lowest-priced price cap LEC in Iowa (namely, Century Link) charges for the functionally equivalent service. *Connect America Order* ¶¶ 689–90; 47 C.F.R. § 61.26. As explained in Part I.A *supra*, INS's tariffed rate for CEA service is not the appropriate rate for the transport of access stimulation traffic. Rather, a direct connection service pursuant to which the traffic is routed on a flat-rate basis is the functionally equivalent service. A direct connection service is without question the most efficient and cost-effective means of routing the traffic at issue (*see* AT&T's Complaint, Section II.A.2), and most significantly, it is the way in which the service would be provided by CenturyLink, which is the lowest priced price cap ILEC in Iowa and thus the applicable benchmark under the Commission's access stimulation rules. *See* Habiak Decl. ¶ 40.

Accordingly, INS should have revised its tariff and offered a direct connection service.

C. [[BEGIN CONFIDENTIAL]] [redacted] [[END CONFIDENTIAL]] Traffic Agreements Are Unreasonable Practices that Enable Access Stimulation Schemes at Transport Rates that Exceed the Appropriate Benchmarks.

Even if INS is not itself engaged in access stimulation within the meaning of the Commission's rules, then, in the alternative, the Commission should determine that INS's practice of **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** charging its CEA tariff rate in connection with such traffic, is unjust and unreasonable.

The Commission has broad authority to declare a common carrier's practices unreasonable under Section 201(b).[70] Here, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** and thereby inserting itself into the call routing path, INS both facilitated access stimulation schemes that the Commission has found should have been curtailed, and caused AT&T and other IXCs to incur far higher transport costs on large volumes of access stimulation traffic. In fact, the Commission has previously held that it is an unreasonable practice under Section 201(b) to "facilitate an arrangement among several entities to capture access revenues that could not otherwise be obtained by lawful tariffs."[71] That is what has occurred here.

If the Iowa access stimulating CLECs had themselves transported the large volumes of traffic at issue, then the transport rates applicable to the traffic would have been substantially lower than INS's tariff rate. That is because those CLECs are required by the Commission's rules to price their switched access services, including transport, at rates that do not exceed the rates for functionally equivalent service offered by the lowest-priced price cap LEC in the state, which is CenturyLink. 47 C.F.R. § 61.26(g). As AT&T explained in its complaint against Great Lakes, at the large volumes Great Lakes handles, the lowest priced transport service in Iowa is CenturyLink's direct transport service, and Great Lakes was obligated to tariff its services at rates

[70] *See, e.g., Global Crossing Telecomms, Inc.*, 550 U.S. at 48–50; *Capital Network Sys.*, 28 F.3d at 204; *W. Union Tel. Co.*, 815 F.2d at 1501, n.2.

[71] *In re AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues*, 16 FCC Rcd. 19158, ¶ 22, n.33 (2001), *overruled on other grounds, AT&T Corp. v. FCC*, 292 F.3d 808 (D.C. Cir. 2002); *AT&T Corp. v. FCC*, 317 F.3d 227, 233 (D.C Cir. 2003) (upholding the Commission's 201(b) unreasonable practice determination because "the entire arrangement was devised solely in order to circumvent regulation").

no higher than Century Link's rates for direct transport service.[72] At a minimum, Great Lakes was obligated to "permit an IXC to install direct trunking from the IXC's point of presence to [Great Lakes's] LEC's end office, thereby bypassing any tandem function."[73] As AT&T has further explained, under either scenario, the price of the transport would have been about **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** percent less than INS's CEA rate. *See* AT&T Complaint, Section II.A.2; *see also* Habiak Decl. ¶¶ 23–28; Ex. 48, Declaration of John W. Habiak, *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-16-MD-001, ¶¶ 19–24 (filed August 16, 2016).

INS's traffic agreements with CLECs engaged in access stimulation are nothing more than arrangements to increase the costs of transporting these CLECs' access stimulation traffic. **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** In fact, INS's traffic agreements and its excessive CEA

[72] *See, e.g.*, Ex. 66, AT&T Reply Legal Analysis, *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-16-MD-001, at 4–6 (filed Oct. 6, 2016).

[73] *PrairieWave*, 23 FCC Rcd. 2556, ¶ 27.

rate have perpetuated access stimulation schemes in Iowa that otherwise might have been "curtail[ed]," as the Commission directed. *See Connect America Order* ¶ 649.[74]

In short, INS inserted itself into the call routing path on the access stimulation traffic not for any legitimate reason or to reduce costs of its IXC customers, but solely to bill its tariffed CEA rate on the large volumes of access stimulation traffic.[75] Accordingly, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** and to then charge its CEA tariff rate in connection with such traffic, was an unreasonable practice in violation of Section 201(b).

IV. INS HAS IMPROPERLY MANIPULATED ITS CEA RATES IN VIOLATION OF SECTION 201(b).

As noted in the Complaint, the corporate structure that INS has employed in connection with its provision of CEA service raises concerns regarding the possibility of cross-subsidization and/or rate manipulation. *See* AT&T Complaint, Section V. One area of particular concern centers on the fact that INS's Access Division does not own its own fiber network but instead leases its network facilities from a separate INS entity.

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[74] Given the Commission's reduction in terminating end office charges (which are now $0.0007 per minute), if the transport rates billed on the traffic had been priced at the lowest available rates in the state, as the Commission required, then the access stimulation schemes may have become uneconomic. *Cf. All American*, 28 FCC Rcd. 3477, ¶ 30 (arrangements were unreasonable under Section 201(b) when the "scheme would have ended because, under the Commission's rules, [the intermediate carrier] itself no longer could charge high rates and retain the resultant revenue"); *id.* ¶¶ 29, 30 & n.127 (an "artifice" put in place to "extract inflated access charges from [IXCs]" is "an unreasonable practice") (citing *Total Telecomms. Servs., Inc. v. AT&T Corp.*, 16 FCC Rcd. 5726, ¶ 16 (2001)).

[75] *Hypercube*, 2009 WL 3075208, at *6 (The Commission did not intend to allow "unnecessary intermediate LECs demanding payment from IXCs. The FCC surely did not intend to require IXCs to pay LECs who are merely profiting from the FCC's rulings. . . . A company that provides no additional value to anyone may not unnecessarily insert itself into the chain of carriers . . . .").

In initially approving INS's provision of CEA service, the Commission recognized that issues regarding cross–subsidization could arise but did not directly address them. *See INS Order* ¶ 24. Instead, as it had done in the *Indiana Switch* case, it deferred consideration of such matters to later tariff filings and/or complaint proceedings. *See Indiana Switch CCB Order* ¶ 22. In so doing, however, the Commission made clear that the future rate submissions of CEA providers would be carefully scrutinized:

> We remind [Indiana Switch] that no access tariff will be allowed to become effective which unreasonably discriminates or contains unjust or unreasonable terms and conditions. Pricing strategies or rates, cost support data, terms and conditions of the tariff submitted will be analyzed to ascertain the existence of any unreasonable discrimination or cross-subsidization by [Indiana Switch].

Indiana Switch Review Order ¶ 6. As further discussed below, INS's current CEA rates raise a number of concerns that call into question their reasonableness under Section 201(b) of the Act.

A. The High Level of INS's CEA Rates.

Since INS's CEA service was first approved in 1988, rates for telecommunications services (including access services) have declined precipitously. For example, in a 2010 report entitled "Trends in Telephone Service," the Commission reported that the national average traffic sensitive interstate switched access charge per minute went from $0.030 (in April 1989) to $0.0064 (in 2010)[76] – a decline of almost 79%. Moreover, as the Commission's 2011 transitional rules have taken effect, that downward trend has continued. *See* Rhinehart Decl. ¶ 8.

By contrast, INS's rates for CEA service have remained relatively flat since they were put in place in 1989. INS's initially approved rate for interstate CEA service was $0.0117 per minute;[77] its current interstate rate is $0.00896 per minute – a decline of about three tenths of a

[76] *See* Ex. 57, FCC, *Trends in Telephone Service*, Table 1.2 (W.C.B. Sept. 2010), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf; *see also* Rhinehart Decl. ¶ 8.

[77] *See In re Iowa Access Div. Tariff FCC No.1*, 4 FCC Rcd 3947, ¶ 9 (1989) ("*INS Rate Order*").

cent over the intervening 27-year period. *See* Rhinehart Decl. ¶ 7. Moreover, the evidence shows that INS's interstate CEA rate has actually increased in the past few years from $0.00623 per minute (in 2013) to its current level. *Id.* The evidence further shows that INS's current rate ($0.00896 per minute) is actually higher than the rate that was in effect in 2011 ($0.00819 per minute) (*see id.* ¶ 8) when the Commission issued its decision in the *Connect America* proceeding capping all access rates at their then current levels.[78]

The high level of INS's current CEA rates is particularly difficult to understand given the fact that INS's initial investment in the switching equipment it needed to provide equal access has largely been depreciated and recovered in INS's prior rates. *See* Rhinehart Decl. ¶ 9. In addition, between 2005 and 2011, the volume of interstate minutes transported over the INS network more than tripled. *See id.*; *see also* AT&T Complaint, Section I.B. As explained in Mr. Rhinehart's declaration, these two factors working in combination should have resulted in a significant decline in INS's CEA rates. *See* Rhinehart Decl. ¶ 9.[79] But that did not occur. In 2005, INS's rate was $0.0103 per minute. *See* Ex. 16, INS 2006 Tariff Filing, at 3. As previously noted its current rate is $0.00896 per minute – a decline of only slightly more than one tenth of a cent. *See* Rhinehart Decl. ¶ 9.

INS's CEA rates also do not appear to reflect any cost efficiency gains resulting from advances in transmission technology. *See* Rhinehart Decl. ¶ 10; *see also* Ex. 67, Copeland Decl.

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[78] *See Connect America Order* ¶¶ 648–701. The situation with respect to INS's intrastate CEA rate is even worse. Not only is that rate significantly higher than INS's interstate CEA rate, it does not appear that INS's intrastate CEA rate has been reduced since the early 1990s. Habiak Decl. ¶ 38.

[79] S*ee also In the Matter of Qwest Commc'ns Corp. v. Farmers & Merchants Mut. Tel. Co.* ("*Farmers I*"), 22 FCC Rcd. 17973, ¶ 24 (2007) (crediting testimony demonstrating that an access stimulation LEC's "costs did not rise by nearly the same proportion as its access revenues"); Ex. 67, Declaration of Peter D. Copeland, *Qwest Comm'n Corp. v. Farmers and Merchants Mut. Tel. Co,* File No. EB-07- MD-001, ¶¶ 5–14 (dated May 1, 2007) ("Copeland Decl.") (same).

¶¶ 11–14. In its bi-annual tariff filings, INS has trumpeted the fact that it has made significant investments in its fiber network.[80] Those investments, however, do not appear to have resulted in lower CEA rates. Indeed, in its most recent filing, INS asserted that its projected revenue requirement would support a rate of $0.01332 per minute,[81] which is almost two tenths of a cent higher than INS's interstate CEA rate in 1989 (*i.e.*, $0.0117 per minute). *See* Rhinehart Decl. ¶ 10. Moreover, this increase occurred despite expected efficiency gains and a substantial increase in traffic volumes due to INS's decision to engage in access stimulation. *Id.*[82]

Further, INS's recent tariff filings demonstrate that INS's CEA rate is excessive even with respect to legitimate CEA traffic.[83] As Mr. Rhinehart explains in his declaration, INS's improper inclusion of "Uncollectible Revenues" in the revenue requirement supporting its 2016 Tariff Filing had the potential effect of inflating INS's CEA rate by $0.00659 per minute. *See id.* ¶ 11. Indeed, if those Uncollectible Revenues are excluded from the revenue requirement underlying INS's 2016 CEA rate, the resulting rate would be $0.00673, which is more than two tenths of a cent less than

[80] *See* Ex. 18, INS 2010 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity . . . . Approximately $20 million has been expended since 2006 and an additional $4.5 million is planned for 2010."); Ex. 19, INS 2012 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $9.6 million has been expended since 2009 and an additional $11.3 million is planned for 2012."); Ex. 20, INS 2013 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $20.3 million has been expended since 2010 and an additional $22.5 million is planned for 2013.").

[81] *See* Ex. 22, INS 2016 Tariff Filing, at 4–5; *see also* Ex. 21, INS 2014 Tariff Filing, at 4 (projecting a rate of $0.01297 per minute).

[82] *Cf. All American*, 28 FCC Rcd 3477, ¶ 12 (finding that the access rates of another intermediate LEC declined by about 80 percent, and, absent misconduct, would have declined an additional 75 percent as "a result of the significant increase in traffic" due to an access stimulation scheme).

[83] As explained in the Complaint and in Mr. Habiak's declaration, a reasonable rate for the transport of access stimulation traffic would be significantly lower than the rate ($0.00649 per minute) that INS's recently filed first with respect to its now withdrawn contract tariff service and then with respect to its volume discount service. *See* AT&T Compliant, Section II.A.2; Habiak Decl. ¶¶ 23–28.

INS's current rate. *Id.* Likewise, the cost support material presented in connection with INS's April 2017 Revised Tariff Filing also supports the conclusion that INS's CEA rate is excessive. That documentation indicates that a rate of $0.00604 per minute would be sufficient to support INS's proposed revenue requirement less uncollectibles. *Id.* ¶ 12. Moreover, when the minimum traffic volumes associated with INS's May 2017 "volume discount" service are applied to the revenue requirement presented as support for the proposed rate of $0.00649 per minute, the resulting rate would be $0.003624 per minute, which is more than five tenths of a cent lower that INS's current rate. *Id.*

Finally, the fact that INS has lowered the rates that it charges for some of its non-CEA services only serves to highlight the unreasonableness of INS's current CEA rates. For example, in the *Alpine* case, a representative of one of the LECs that was leasing capacity on INS's network **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Additionally, beginning in 2004, INS entered into contracts with a number of LECs to provide tandem switching and transport **[[BEGIN CONFIDENTIAL]]** [redacted]

[84] *See* Rhinehart Decl. ¶ 13; *see also* Ex. 68, Deposition of Thomas Lovell, *Alpine Comm'cns, LLC, v. AT&T Corp.*, No. 08-01042, at 56:9–58:9 (taken Oct. 29, 2009).

[85] *See* Complaint, Section II.A.2, ¶ 79 & nn. 73 and 74.

[redacted] **[[END CONFIDENTIAL]]** – which further shows that the actual cost of transporting traffic on INS's network is well below INS's current CEA rate and has been for a long time. *Cf. AT&T Corp. v. BTI*, 16 FCC Rcd. 12312, ¶¶ 23–41 (2001) (a carrier's access rates were not reasonable based on comparisons to other appropriate benchmarks).

In sum, the forgoing evidence strongly supports a finding that INS's current CEA rate is unreasonable. Additional evidence supporting that conclusion is discussed in the following sections.

B. INS's Handling of Network Investment Costs.

As previously noted, INS has made significant investments in its fiber network.[87] Further, it seems clear that some portion of that investment has been funded by revenues derived from INS's CEA service. What is less clear is how INS's Access Division has benefited, if at all, from that investment.

The various schedules attached to INS's Tariff Filings make clear that none of INS's investment in its fiber network is recorded on the Access Division's books. Instead, that investment is recorded on the books of INS' Network Division. *See* Rhinehart Decl. ¶ 14. As a consequence, the Access Division does not earn a rate of return on that investment. *Id.* Instead, the Access Division appears to lease fiber capacity from INS's Network Division at a rate that is

[86] *See* Rhinehart Decl. ¶ 13; *see also* **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[87] *See supra* note 80.

not disclosed in INS's tariff filings, or in the support data that INS has produced as part of the informal discovery process. *Id.*

As can be seen from Table B to the Rhinehart declaration, network costs constitute a significant portion of the Access Division's revenue requirement (less uncollectibles), ranging from 45.3 percent (in 2012) to 75.5 percent (in 2017). *See* Rhinehart Declaration ¶ 15 Table B. Moreover, during most years, that percentage exceeded 60 percent, and in the recent years, it has steadily increased from 65.6 percent (in 2014) to 75.5 percent (in 2017). *Id.* Notwithstanding the magnitude of these costs, however, INS's Tariff Filings do not provide any specific information as to the basis for the network costs allocated to INS's Access Division. *See id.*

In the initial INS tariff proceeding held in 1989, NWB asserted that the Access Division was paying all of the costs to construct and maintain INS's network, including a rate of return of over 30 percent. *See INS Order* ¶ 6. As explained by Mr. Rhinehart, such a rate of return would be excessive. *See* Rhinehart Decl. ¶ 16. More recent deposition testimony suggests that the Access Division is leasing capacity at a rate of **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* Rhinehart Decl. ¶ 17.

[88] *See id.* ¶ 16; *see also* Ex. 69, Deposition of Dennis Creveling, *Alpine Comm'cns, LLC v. AT&T Corp.*, No. 08-01042, at 27:3–28:6 (taken Feb. 10, 2010).

To ensure that cross-subsidization is not occurring, INS should, at a minimum, be required to demonstrate that the lease rates that the Access Division pays for network capacity do not exceed the rates paid by other parties for such capacity.[89] Further, to the extent that it cannot make such a showing, INS's CEA rates should be found to be unreasonable, and the Commission should also determine whether INS, by failing to disclose its basis for the network costs allocated to INS's Access Division, has "furtively employ[ed] improper accounting techniques in a tariff filing, thereby concealing" INS's unreasonable rates, such that INS is liable for refunds to all its customers. *See ACS*, 290 F.3d at 413.

C. INS's Allocation of Costs for Network Facilities.

A related area of concern relates to INS's allocation of the costs associated with the Access Division's use of INS's fiber network. As can be seen from Table C to the Rhinehart declaration, the Access Division's allocated share of the costs of Cable & Wire Facilities went from about 45% to 48% (during 2004–2008) to over 70% (in 2013–2017). *See* Rhinehart Decl. ¶ 18, Table C. Further, between 2004 and 2016, the actual dollars for Cable & Wire Facilities allocated to INS's other divisions declined from about $14 million in 2004 to about $5 million in 2017. *Id.* ¶ 19. No explanation is provided in INS's Tariff Filings for these changes, nor is the manner in which these costs were allocated discussed. *Id.* As explained by Mr. Rhinehart, to the extent that Cable & Wire Facilities costs are being over-allocated to INS's Access Division, INS's CEA rates will necessarily be overstated. *Id.* If INS cannot demonstrate a proper allocation of its network costs,

[89] In the *Indiana Switch* case, the Commission declined, as part of Indiana Switch's Section 214 authorization, to impose a condition that Indiana Switch agree to lease facilities to its Access Division at the lowest rate it offers any other customer. *Indiana Switch CCB Order* ¶ 22. In so ruling, however, it did not rule out the possibility of revisiting that issue in a subsequent rate case. *Id.*

then INS's CEA rates should be found to be unreasonable, and the Commission should also determine whether INS has engaged in "furtive concealment." *See ACS*, 290 F.3d at 413.

D. INS's Manipulation of its Lease Cost Calculations.

As explained above, there is no explanation either in INS's Tariff Filings or in the support documentation that INS has produced as part of the informal discovery process as to the basis for the calculation of the leases costs allocated to INS's Access Division or the reasons for the dramatic changes in those costs from year to year. *See supra* Part IV.B. Further, the cost information that has been produced by INS suggests that INS's Access Division may be cross-subsidizing the services of INS's other division through its lease payments to INS's Network Division. *See* Rhinehart Decl. ¶¶ 21–27.

For the years 2010, 2012, and 2013, INS has produced Income Statement Summaries **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* Rhinehart Decl. ¶ 22, Table D. Worse yet, when these changes are viewed in conjunction with the changes in INS's tariffed CEA rates during this same time period,[90] a serious issue regarding cross-subsidization arises. As explained by Mr. Rhinehart, to the extent that the 2013 increase in CEA rates was caused by the allocation of costs

[90] During this same period, INS's tariffed CEA rate first decreased from $0.00819 per minute to $0.00623 per minute (decline of about 23 percent) and then increased to $0.00896 per minute (an increase of about 44 percent). *See* Rhinehart Decl. ¶ 7, Table A.

to the Access Division that had previously been allocated to INS's other divisions, that would raise concerns about cross-subsidization. *See* Rhinehart Decl. ¶ 23.

Moreover, these concerns are heightened by the fact that during this period, INS was investing heavily in its fiber network, while at the same time, the Access Division's overall throughput was declining. *See* Rhinehart Decl. ¶ 24, Table E. As Mr. Rhinehart explained, given that overall drop in demand, and the Commission's stated position that access stimulation should be "curtailed," it is very hard to justify that added investment (about $50 million between 2010 and 2016) and its subsequent allocation to the Access Division. *Id.* ¶ 25. Furthermore, the fact that the Access Division's lease cost-per-minute-of-use skyrocketed in 2014 (*see id*. ¶ 26, Table F) and that its network costs as a percentage of its revenue requirement (less uncollectible revenues) increased from 52.8% (in 2013) to 75.5% (in 2017) (*see id*. ¶ 15, Table B), strongly supports the conclusion that the additional costs of that new investment were allocated to the Access Division and that, as a consequence, the Access Division may be cross-subsidizing INS's other services. *Id.* ¶ 27. Absent a proper showing by INS as to its treatment of these costs, the Commission should find INS's CEA rates to be unreasonable, and determine whether INS has engaged in "furtive concealment." *See ACS*, 290 F.3d at 413.

E. INS's Allocation of Costs Between Interstate and Intrastate Traffic.

In initially approving INS's application to provide CEA service in Iowa, the Commission specifically noted INS's assumption that "the majority of the network's costs w[ould] be recovered from intraLATA toll calls" and cautioned that if that key assumption changed, the Commission would need to review INS's proposal. *INS Order* ¶ 32.

As can be seen from Table G to Mr. Rhinehart's declaration, that assumption held true for periods prior to 2008. *See* Rhinehart Decl. ¶ 29, Table G. During those periods, the majority of the Access Division's overall revenue requirement was allocated to intrastate CEA service. *Id*. In

2008, however, that situation changed dramatically. Thereafter, the vast bulk of the Access Division's revenue requirement was assigned to interstate CEA service. *Id.* Indeed, in 2016, almost 94% of that requirement was allocated to interstate CEA service. *Id.*

As explained by Mr. Rhinehart, one possible explanation for this dramatic shift was INS's decision in 2008 to adjust the Percent Interstate Use ("PIU") factor used in its Tariff Filings to "more accurately classif[y] the jurisdiction of . . . call aggregator traffic." *See* Rhinehart Decl. ¶ 30; *see also* Ex. 17, INS 2008 Tariff Filing, at 1–2. As INS explained in its 2008 Tariff Filing, this change resulted in the PIU factor for calls associated with call aggregation increasing from 48 percent to 78 percent. Ex. 17, INS 2008 Tariff Filing, at 3–4. In other words, an additional 30 percent of the call aggregation traffic was assigned to the interstate jurisdiction. *See* Rhinehart Decl. ¶ 30.

In making this change, INS did not bring to the Commission's attention that a key assumption underlying the Commission's initial approval of CEA service in Iowa had changed, nor did it point out that this change had had an enormous impact on the allocation of network costs between the interstate and intrastate jurisdictions. *Id.* ¶ 31. Beginning in 2008, the "majority of [INS's] network's costs" (*INS Order* ¶ 32) were no longer being recovered from intrastate CEA service. Rhinehart Decl. ¶ 31. Instead, most of the costs are now recovered from interstate traffic (*id*.), and that is a direct result of INS's decision to transport and charge CEA rates in connection with access stimulation traffic.

Further, there seems to be a disconnect between the new PIU factor that INS adopted in 2008 and the percentage of costs that INS has allocated to interstate CEA service since 2008. *See id.* ¶ 32. As shown in Table G to the Rhinehart Declaration, the percentage of costs allocated to the interstate jurisdiction started out well below the 78 percent PIU factor in 2008 (60.9 percent)

but now exceeds that factor by a wide margin (93.9 percent in 2016). *Id.* Obviously, to the extent that these allocations are not properly aligned with the PIU factor, INS's CEA rates could be distorted. *Id.* Moreover, as noted by Mr. Rhinehart, the potential problems associated with this disconnect are exacerbated by the fact that INS does not appear to have adjusted its intrastate rates since the early 1990s. *Id.*

Finally, to the extent that INS has understated the interstate PIU factor for access stimulation traffic, its interstate CEA rates could be inflated. *Id.* ¶ 33. In its 2008 tariff filing, INS indicated that for its 2009 test period, it was projecting "1.6 billion terminating conference call minutes generated by call aggregators," of which 78 percent were rated as interstate.[91] If, in fact, a significantly larger percentage of those access stimulation calls were interstate (say 98 percent), INS's interstate CEA rate for that test period would necessarily be lower, assuming all other assumptions remained the same. Rhinehart Decl. ¶ 33. In addition, the fact that there is a significant difference in the levels of INS's interstate and intrastate CEA rates makes it imperative that the PIU factor be accurately computed. *Id.*

In light of these issues, INS should, at a minimum, be required to demonstrate that it has not over-allocated costs to its interstate traffic and that its PIU factors have been properly computed on a consistent and accurate basis. It should also be required to address the dramatic shift in costs between its interstate and intrastate traffic and explain how that shift is consistent with the assumptions underlying the Commission's original approval of CEA service in Iowa. In the

[91] *See* Ex. 17, INS 2008 Tariff Filing, at 2. The fact that INS has the ability to identify the level of call aggregation traffic on its network is surprising given INS's recent comments in opposing AT&T's forbearance petition where it insisted that it does not have the capability to identify this type of traffic. *See* Ex. 38, INS Forbearance Opp., at 13; Ex. 73, Iowa Network Services, Inc.'s Reply Comments, *In re Petition of AT&T Services, Inc. for Forbearance under 47 U.S.C. § 160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges*, WC Docket No. 16-363, at 3 (filed Dec. 19, 2016).

absence of such showings, the Commission should find INS's CEA rates to be unreasonable, and determine whether INS has engaged in "furtive concealment." *See ACS*, 290 F.3d at 413.

F. The Unreliability of INS's Test Period Traffic Forecasts.

An additional area of concern relates to the reliability of the traffic forecasts used by INS in developing its CEA rates. As can been seen from Table H to Mr. Rhinehart's declaration, there is a great deal of variation from year to year in INS's test period traffic forecasts. *See* Rhinehart Decl. ¶¶ 34–35, Table H. That Table also shows that INS's test period traffic forecasts are not very accurate when compared to actual demand. *Id.* ¶ 35. Indeed, for the test periods from July 1, 2010 through June 30, 2011, INS consistently underestimated demand by on average 240 million minutes per year. *Id.* Further, for two test periods (July 1, 2010 through June 30, 2011, and July 1, 2014 through June 30, 2015), INS underestimated the demand by at least 400 million minutes. *Id.* The evidence also shows that INS's test period traffic forecasts, particularly in the more recent periods (2012 to 2016), are not consistent with AT&T's billing data, which shows that AT&T's INS volumes have steadily increased over that same period. *See id* ¶ 37; *see also* Habiak Decl. ¶ 54.

As explained by Mr. Rhinehart, to the extent that INS's test period traffic forecasts are understated, INS rates would be inflated (all other factors remaining constant). *See* Rhinehart Decl. ¶ 37. Given the sizeable disparities between INS's traffic forecasts and its actual demand, INS should, at a minimum, be required to explain the basis for its traffic forecasts, and demonstrate that its forecasts were done on a consistent and reasonable basis. In the absence of such showings, the Commission should find INS's CEA rates to be unreasonable, and determine whether INS has engaged in "furtive concealment." *See ACS*, 290 F.3d at 413.

G. INS's Improper Inclusion of "Uncollectible Revenues."

As noted in the Complaint, since 2010, INS has included sizeable amounts of so-called "Uncollectible Revenues" in its projected revenue requirements, thereby inflating its interstate CEA rates. *See* Rhinehart Decl. ¶¶ 43–48. According to INS's Tariff Filings, these amounts relate to billing disputes that INS has had with at least two IXCs regarding INS's practice of charging its tariffed CEA rates on access stimulation traffic.[92] In both cases, the IXCs took the position that the amounts were not properly billed, and INS brought suit.[93]

INS's practice of including these disputed amounts in its revenue requirement is problematic for the following reasons. *First*, the Commission's regulations regarding the inclusion of uncollectible revenue in the revenue requirement make clear that only revenue that is "properly billed" can be recovered as uncollectible revenue: "Uncollectible revenues are included in interstate revenue requirements to reflect *properly billed* revenues which cannot be collected."[94] Carriers are forbidden from including "unbillable revenue" as an "uncollectible" on their annual Telecommunications Reporting Worksheets.[95] Since both AT&T and Sprint have withheld the

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[92] *See* Ex. 17, INS 2008 Tariff Filing, at 2; Ex. 18, INS 2010 Tariff Filing, at 2; Ex. 19, INS 2012 Tariff Filling, at 2; Ex. 20, INS 2013 Tariff Filing, at 2; Ex. 21, INS 2014 Tariff Filing, at 2; Ex. 22, INS 2016 Tariff Filing, at 2, 4–5.

[93] The "Uncollectible Revenues" discussed in INS's 2010, 2012, 2013, and 2014 Tariff Filings appear to relate to a dispute between INS and Sprint. *See, e.g.*, *Iowa Network Servs. v, Sprint Comm'cns Co.*, No. 4:10-CV-102 (S.D. Iowa). The "Uncollectible Revenues" discussed in INS's 2016 Tariff Filing also appear to include amounts withheld by AT&T in connection with the matters at issue in this proceeding. *See* Rhinehart Decl. ¶ 41, n.53.

[94] *In re Annual 1988 Access Tariff Filings*, 3 FCC Rcd. 1281, ¶ 245 (1987) (emphasis added); *In Re Telecomms. Relay Serv., N. Am. Numbering Plan*, 17 FCC Rcd. 24952, ¶ 57 (2002) (noting that carriers cannot record universal service contributions as "uncollectibles" where those amounts cannot be properly billed to customers).

[95] *See Wireline Competition Bureau Releases the 2016 Telecomms. Reporting Worksheets & Accompanying Instructions*, 31 F.C.C. Rcd. 973 (2016).

amounts at issue on the ground that they were not "properly billed" by INS, those amounts should not have been included in INS's projected revenue requirement.

Second, this is not a case where the amounts allegedly owed by customers "cannot be collected" due to the customers' insolvency. If INS were to prevail on its claims, both AT&T and Sprint have the financial wherewithal to pay the amounts that INS claims are due and owing. Furthermore, INS's tariff specifically contemplates that disputed amounts might be withheld and provides a mechanism for compensating INS if those amounts were not properly withheld.[96] In these circumstances, there is no justification for INS's inclusion of these amounts in its revenue requirement as "Uncollectible Revenues."

Third, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* Ex. 59, Letter from James U. Troup and Tony S. Lee (Counsel for INS) to Michael J. Hunseder and James F. Bendernagel (Counsel for AT&T), at 2 (dated Mar. 23, 2017).

Finally, by including these amounts in its revenue requirement, INS has inflated its rates and thereby imposed costs on its other CEA customers, which are the subject of legitimate ongoing disputes. As can be seen from Table J to the Rhinehart declaration, the potential rate impact of this practice is between 0.074 cents per minute and 0.659 cents per minute. *See* Rhinehart Decl. ¶¶ 41–42, Table J.

[96] *See, e.g.*, Ex. 3, INAD Tariff FCC No. 1 § 2.4.1(B)(2)(c) ("In the event that a billing dispute concerning any rates or charges billed to the customer by Iowa Network is resolved in favor of Iowa Network, any payments withheld pending settlement of the dispute shall be subject to [a] late payment penalty . . . .").

For the reasons discussed above, there is no justification for this rate treatment, which has the obvious impact of inflating rates.[97] Consequently, the Commission should find that INS's rates are not just and reasonable.

CONCLUSION

For the reasons set forth above and in the Formal Complaint, the Commission should grant AT&T the relief it has requested.

[97] In its April 2017 Tariff Filing, INS did not allocate any "Uncollectible Revenues" to its proposed contract tariff service, thus exempting those customers from having to bear any of those alleged costs. *See* Ex. 46, INS April 2017 Revised Tariff Filing, Contract Tariff Support, Section 3, Schedule A-1, Line 15. It is further of note that this difference in ratemaking largely accounts for the difference between INS's current CEA rate and its proposed new contract tariff rate. Indeed, when the impact of the inclusion of "Uncollectible Revenues" on its 2016 revenue requirement ($0.00659 per minute) is subtracted from the rate INS claims is "supported" by its revenue requirement ($0.01332 per minute), the resulting rate ($0.006473 per minute) is almost identical to INS's new contract tariff rate of $0.00649 per minute. *See* Rhinehart Decl. ¶ 43, n.56.

Respectfully submitted,

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Dated: June 8, 2017

Counsel for AT&T Corp.

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(202) 457-3090** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

DECLARATION OF JOHN W. HABIAK

I, John W. Habiak, of full age, hereby declare and certify as follows:

1. I am employed by Complainant AT&T Corp. ("AT&T"). My job title is Carrier Relations Director, and I am in AT&T's access management organization. My responsibilities include carrier relations and fraud monitoring and, in that connection, I have become very familiar with the services provided by access providers and the associated billing for such services, as well as various access stimulation and other arbitrage schemes related to switched access services. I am providing this Declaration in support of AT&T's Formal Complaint against Iowa Network Services, d/b/a Aureon ("INS"). The information provided in this Declaration is based on my personal knowledge and my review of documents and records kept by AT&T in the normal course

of its business, as well as certain materials provided by INS.[1]

2. Based on my responsibilities, I am generally familiar with INS, its rates and operations as a centralized equal access ("CEA") provider and INS's billing of, and relationship with, AT&T. I am also generally familiar with the reforms implemented by the Commission in its November 18, 2011, Order in the *Connect America Fund* proceeding, *In re Connect America Fund*, 26 FCC Rcd. 17663 (2011) ("*Connect America Order*"), as they pertain to interstate and intrastate access rates. In addition, I have knowledge of INS's transport of AT&T traffic bound for Great Lakes Communications Corp. ("Great Lakes") and other competitive local exchange carriers ("CLECs") engaged in access stimulation in Iowa. Further, I am generally familiar with Qwest Corporation d/b/a CenturyLink QC ("CentruryLink"), which is an incumbent local exchange carrier ("ILEC") operating in various locations in the United States (including Iowa), and with its switched access services. And I am familiar with the volume of AT&T long distance calls handled by INS, as well as the volumes of AT&T calls directed to Great Lakes and other CLECs engaged in access stimulation that subtend the INS network.

3. AT&T's dispute with INS in this matter concerns AT&T's role as a purchaser of services from INS, and not its role as a common carrier providing services to customers.

4. AT&T's claims in its Formal Complaint are primarily directed at access stimulation traffic, which INS delivers to Great Lakes and other access stimulating CLECs for ultimate delivery to free conference and chat companies ("Free Calling Parties") that have partnered with the access stimulating CLECs.

[1] Documents referenced herein that are exhibits to AT&T's Formal Complaint are referenced as "Ex. __," with additional page numbering or other citation information as appropriate.

The Economics Of Access Stimulation.

5. In my experience, access rates are generally higher in rural areas compared to urban areas because, among other things, rural local exchange carriers ("LECs") have a smaller, more geographically-dispersed customer base than do LECs in urban areas.

6. To take advantage of those high rates, CLECs engaged in access stimulation have historically located their operations in jurisdictions where they can benchmark their access rates to the rates of a rural ILEC with high access rates. As a result, access stimulation schemes occur mostly in rural states, such as Iowa, which have a large number of rural ILECs with relatively high access rates.

7. In my experience, those CLECs engaged in access stimulation generally do not compete with the rural ILECs for local telecommunications customers. Rather, such CLECs focus almost entirely on partnering with Free Calling Parties to drive traffic to the Free Calling Parties' chat and conferencing equipment, which is generally located in the access stimulating CLEC's central office. The resulting increase in traffic generates significantly higher access revenues than would normally be expected in a rural area, which the access stimulating CLEC then shares with the Free Calling Parties with which it has partnered.

8. Because CLECs generally have bottleneck monopolies with respect to their end user customers, AT&T and other long distance carriers can only transmit calls directed to those customers via the CLEC's network. Also, as I understand the Commission's rules, AT&T is generally prohibited from "blocking" calls bound for CLECs (or any other carriers), even if a particular CLEC is engaged in a practice like access stimulation.

9. To make matters worse, CLECs generally insist that they have the right to select both the route and the manner in which calls directed to their customers will be connected to their

networks. Consequently, once a CLEC decides to engage in access stimulation and designates how access stimulation traffic is to be routed to its end office switch, AT&T and other long distance carriers are billed charges for all calls to that end office switch based on the routing chosen by the CLEC, regardless of whether the chosen route is efficient or cost-effective.

10. Further to that point, inefficient routing, by definition, generates higher access charges than efficient routing does. Therefore, because access stimulation involves the sharing of access revenues, there are obvious incentives for an access stimulating CLEC to route traffic in an inefficient way and thereby increase the access revenues available to be shared among the CLEC, its Free Calling Party partners, and other participants in the access stimulation scheme.

INS Played A Key Role In The Growth Of Access Stimulation In Iowa.

11. In Iowa, INS played an important role in the expansion of access stimulation, which grew rapidly after it first emerged in 2005. Based on my experience, it was imperative for CLECs who wanted to engage in access stimulation to enter into arrangements with INS to transport their traffic from Des Moines to the local exchanges in which those CLECs operated.

12. The reason access stimulating CLECs needed access to INS's network was not to obtain the ability to provide equal access service to local residential and business customers. For one thing, access stimulating CLECs, like Great Lakes, have few if any such customers. Also, as I discuss below, the Free Calling Parties with which access stimulating CLECs generally partner have no need for the 1+ dialing capability that is the primary benefit of equal access service. Their business model is based on receiving long distance calls, not originating such calls.

13. Rather, the reason access stimulating CLECs needed access to INS's network was because that network constituted the most attractive way to transport the huge volumes of access stimulation traffic to their remotely located end office switches. These entities did not then have

the financial resources to build their own transport networks. Further, the public Internet, which currently is used to transport some access stimulation traffic to the end office switches of access stimulating CLECs, was not available for such use in 2005.

14. Also, the CenturyLink network was not a viable option for a number of reasons. First, CenturyLink is not only the largest ILEC in Iowa, it also is a major long distance carrier that would be negatively impacted by access stimulation and therefore not likely inclined to facilitate that practice. Indeed, CenturyLink has actively opposed access stimulation in the courts, at the Commission and at various state commissions. Second, access stimulating CLECs have an incentive to engage in "mileage pumping" and thereby increase the access revenue available to be shared with their Free Calling Party partners. As a long distance carrier that would be the victim of such mileage pumping, CenturyLink would have no reason to facilitate that practice. By contrast, INS has been willing to lease capacity on its network to facilitate that practice.

15. The only other entity in Iowa that had a network that could accommodate the needs of the access stimulating CLECs was INS. As the informal discovery that has taken place in this case shows, INS has entered into traffic agreements (TAs) with a number of CLECs that are engaged in access stimulation, including **[[BEGIN CONFIDENTIAL]]** [redacted]

[2] *See e.g.*, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Another LEC subtending the INS network that appears to be engaged in access stimulation is Reasnor Telephone Company.

[redacted] **[[END CONFIDENTIAL]]**

16. As a result of these agreements, INS has transported massive volumes of access stimulation traffic on behalf of the access stimulating CLECs with which it has contracted. As explained below, AT&T's billing records indicate that approximately 90 percent of the AT&T traffic that AT&T delivers to INS is access stimulation traffic, with the remaining 10 percent legitimate CEA traffic. Further, information provided by INS shows that access stimulation traffic was more than **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** of INS's total access traffic (Ex. 2, INS Worksheet (Aureon_02696–02708), at Aureon_02698–99, and that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** figure was higher than estimates reported in earlier INS worksheets (Exs. 74–76, INS Worksheets (Aureon_01934–38; 02180–85 ; 02394–99)), indicating that such traffic is growing.

Legitimate CEA Traffic Differs Markedly From Access Stimulation Traffic.

17. Based on my experience and general industry knowledge, I understand that CEA service was designed to facilitate the roll-out of equal access service to small, widely-dispersed rural LECs, whose switches did not have the capability to provide 1+ dialing to multiple long distance carriers. Further, I understand that the networks of INS and other CEA providers were designed to create efficiencies by aggregating small volumes of long distance calls associated with a large number of rural LECs at a single connection point – the central tandem switch.

18. Access stimulation traffic, which the Commission has stated is a "wasteful

arbitrage" practice and harmful to end user customers, differs markedly from legitimate CEA traffic in at least four ways.

19. *First,* the Free Calling Party partners of access stimulating CLECs have no need for equal access service. Equal access enables customers to use 1+ calling to reach their chosen (or presubscribed) long distance provider without dialing special access codes. As such, equal access is relevant to originating long distance calls. The business model of the Free Calling Parties, by contrast, depends on enticing large numbers of people to call them, and therefore traffic stimulated by the Free Calling Parties consists, almost exclusively, of long distance calls to the Free Calling Party conference and chat equipment located in the access stimulating CLECs' central offices. The Free Calling Parties thus have no need to place any long distance calls, and therefore no need for equal access service. Equal access service is irrelevant to access stimulation.

20. *Second*, as previously noted, substantially all of the access stimulation traffic consists of terminating, not originating, traffic. By contrast, the small, rural LECs for which CEA service was designed generally have a more balanced mix of originating and terminating access traffic. Further, a key assumption underlying INS's original application to provide CEA service in Iowa was that a "majority of network costs would be recovered from IntraLATA toll calls." *In re Application of Iowa Network Access Division*, 3 FCC Rcd. 1468, ¶ 32 (1988). Access stimulation calls, by contrast, are almost exclusively interstate, terminating calls. Also, I have reviewed INS's recent tariff filings, and they confirm that the vast majority of INS's traffic consists of interstate, terminating calls.

21. *Third,* in stark contrast to CEA traffic, access stimulation involves delivering massive volumes of long distance traffic to a limited number of access stimulating CLECs. For instance, in 2016, AT&T delivered over four times more long distance traffic to Great Lakes'

single end office switch than it delivered to all of CenturyLink's end office switches in Iowa combined. Further, the volume of traffic that AT&T delivers to each of the small, rural LECs for which INS was created has remained relatively small, and in recent years has been declining.

22. *Fourth*, legitimate CEA traffic either originates from, or terminates to, residential and business customers in the communities served by small, rural ILECs. By contrast, the massive volumes of access stimulation traffic are terminated to the conference and chat equipment of the Free Calling Parties, who bear no resemblance to the residential and business customers of small, rural ILECs, and lack any connection to the communities in which their equipment is located.

The Availability Of More Efficient Methods Of Transporting Access Stimulation Traffic.

23. As a general rule, the most efficient method of delivering large volumes of long distance traffic to a single location is via a direct connection between the long distance carrier's point of presence (or "PoP") and the LEC's end office switch. In fact, it is AT&T's policy and practice to consider implementing a direct connection arrangement whenever switched access traffic to or from a LEC exceeds **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** minutes per month. The flat, rather than per-minute, rate used for direct connections generally provides the most efficient, least-cost way to route such large volumes of traffic. AT&T has also employed direct switching and transport arrangements, as well as facilities leases, that likewise avoid the high per-minute rates associated with tandem switching and transport services.

24. As explained below, such alternatives exist with respect to the traffic at issue in this proceeding and would result in significant savings for both AT&T and its customers. AT&T's ability to take advantage of such alternatives, however, has been thwarted by the conduct of both INS and the access stimulating CLECs that subtend INS's tandem switch.

25. **A Direct Connection Alternative.** As explained in my Declaration submitted in connection with the Formal Complaint proceedings AT&T brought against Great Lakes, during 2014 and 2015, AT&T transmitted to INS approximately **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** minutes of traffic for delivery to Great Lakes. If Great Lakes supplied AT&T with a direct connection at the same rates offered by CenturyLink (which is the lowest-priced price-cap LEC in Iowa), or if AT&T obtained the necessary direct connection facilities from CenturyLink, the costs would be approximately $2,800 per month for each DS-3 needed. Based on the volumes at issue, and depending on the engineering of the circuits, the per-minute cost of such a direct connection would fall into a range between **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Attached to the Formal Complaint is a spreadsheet (Ex. 77) showing the calculations I made based on the traffic volumes at issue and the CenturyLink rates (Ex. 77 is the same as Exhibit 91 to AT&T's Formal Complaint against Great Lakes, currently pending before the Commission).

26. Even using the high end of that range, INS's interstate CEA rate imposes costs on AT&T that are over **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** times higher than the cost of a direct connection. Accordingly, compared to INS's total billed charges to AT&T during 2014 and 2015 of approximately **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** minutes of traffic bound for Great Lakes, the cost to AT&T of a direct connection (again at the high end of the range) would have been only **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

27. **A Contract for Switching and Transport**. In 2014, AT&T entered a contractual arrangement with the CEA provider in South Dakota, South Dakota Network, LLC ("SDN"), to

deliver traffic to Northern Valley Communications, LLC ("NVC"), which like Great Lakes is an access stimulating CLEC with large volumes of access stimulation traffic. The rate that AT&T pays SDN for that service is **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**, which was based on the transport of over **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** MOUs per month for a distance of 147 miles. Moreover, that rate is a conservative estimate for Great Lakes because (i) Great Lakes generates even higher volumes than does Northern Valley – **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** minutes per month – which generally produces lower per-minute rates, and (ii) the distance between Des Moines and Great Lakes' end office in Spencer (132 miles) is 15 fewer miles than the distance covered by the SDN rate (147 miles). Applying the **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

28. **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted] **[[END CONFIDENTIAL]]**

INS's "Mandatory Use Requirement" And Its Impact On AT&T.

29. It is my understanding that INS has taken the position that, under the terms of the Commission Order approving INS's CEA arrangement, long distance carriers are required to route all long distance traffic bound for CLECs in Iowa through INS's network. I further understand INS has **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** I have the following observations regarding INS's so-called "Mandatory Use Requirement."

30. *First*, based on my experience, INS's position that all long distance traffic must be routed through INS's network is not consistent with the facts as they currently exist with respect to long distance service in Iowa. I am, for example, specifically aware of a number of CLECs operating in Iowa, such as Level 3 Communications, LLC, YMAX Communications Corp. and Bandwith.com CLEC, LLC, that have connected to AT&T and other long distance carriers directly or through tandem switches other than INS's tandem switch. Further, I am aware of a number of access stimulating CLECs that subtend the INS network, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** that currently bypass INS's network when they can extract a premium from the long distance carrier. In fact, as I explain below, AT&T has been offered such arrangements.

31. *Second,* INS's insistence that a "Mandatory Use Requirement" exists coupled with its having **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** has suppressed competition as it relates to the provision of transport alternatives. In a number of discussions with CLECs regarding the possibility of installing a direct connection, AT&T has been told that direct connection arrangements were not permissible on account of either the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** or INS's status as a CEA provider in Iowa. Further, in one discussion, the CLEC demanded that AT&T agree to indemnify it against any claims that INS might assert for bypassing the INS network.

32. *Finally,* INS's position that IXCs must use its network, combined with its high CEA rate, has created a pricing umbrella that has enabled access stimulating CLECs that are willing to bypass INS's network to attempt to extract premiums in exchange for agreeing to permit a direct connection. In the past few years, I have had a number of discussions with several entities that had the ability to deliver AT&T's traffic to the networks of access stimulating CLECs via Internet connections. In each instance, I was told that the access stimulating CLEC was only willing to accept the traffic via an Internet-based connection if it was permitted to dictate the price that AT&T would pay, and those prices were well above the prices of the alternatives that I discussed earlier, and thus not competitive. The reason that these CLECs could insist on prices significantly higher than the alternatives is because they have bottleneck monopolies, and absent their agreement to accept the traffic via a direct connection, AT&T has no choice but to use INS's network. The CLECs are thus in a position to set the bypass price at a level only slightly below INS's tariffed CEA rate.

INS's Violation Of The Commission's Rate Cap, Rate Parity And Access Stimulation Rules.

33. In late 2011, the Commission issued the *Connect America Order* in which it adopted new rules designed to curtail access stimulation. The Commission also capped the rates that LECs could charge for all switched access traffic – stimulated and ordinary, interstate and intrastate. As explained below, INS has failed to comply with any of these rules.

34. **The Commission's Rate Cap Rule.** In the *Connect America Order,* the Commission capped most interstate switched access rates at the level of the rates the carrier had in effect on December 29, 2011, which is the date on which the *Connect America Order* became effective.

35. On December 29, 2011, INS's tariffed interstate rate for CEA service was $0.00819 per-minute. For the monthly bills dated January 2012 through July of 2012, INS billed AT&T for interstate CEA service at the $0.00819 rate.

36. In mid-2012, INS lowered its tariffed interstate CEA service rate by 24%, to $0.00623 per-minute, which was consistent with the Commission's reforms and the overall trend of reducing access rates. INS billed AT&T for interstate CEA service at the $0.00623 rate for the bills dated August 2012 to July 2013.

37. In mid-2013, however, INS reversed course and *increased* its interstate rate for CEA service by over 44%, to $0.00896 per-minute. That increase caused INS's CEA rate to exceed the $0.00819 cap set by the Commission, and marked a dramatic departure from INS's prior reduction in rates. Beginning with the August 2013 invoice, INS has billed AT&T for interstate CEA service at the $0.00896 rate in violation of the Commission's rate cap rule.

38. **The Commission's Rate Parity Rule.** INS is also in violation of the Commission's rate parity rule, which required INS to lower its intrastate CEA rates to the same level as its capped interstate CEA rate ($0.00819 per-minute) by July 1, 2013. INS did not do so.

In fact, INS has not revised its tariffed intrastate CEA and transport rates (which are significantly higher than its interstate CEA rate) since 1992.

39. INS's current intrastate tariff, filed with the Iowa Utilities Board, contains a rate for intrastate CEA service of $0.0114 per-minute. *See* Ex. 54, INS Iowa Tariff (Iowa State Utilities Board) No. 1, at 242 (dated Dec. 2, 1988). In addition, unlike INS's federal tariff, INS imposes a separate tariffed transport charge on all intrastate CEA traffic at the rate of $0.000103 per-minute, per-mile. These rates are well in excess of both INS's current rate of $0.00896 per-minute and its capped rate of $0.00819 per-minute. From the August 2013 bill to the present, INS has billed AT&T for intrastate CEA service at rates ($0.0114 per-minute for CEA switching, plus $0.000103 per-minute, per-mile for transport) in violation of the Commission's rate parity rule.

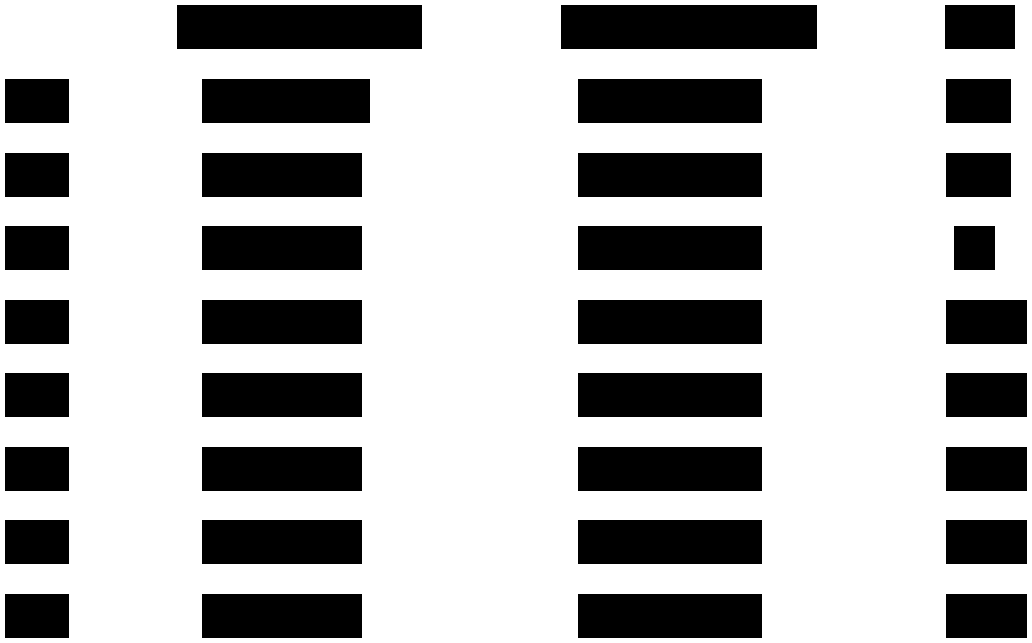
40. **The Commission's Access Stimulation Rules.** INS also is not complying with the Commission's access stimulation rules, which required LECs engaged in access stimulation to lower their rates to the rates of the functionally equivalent service provided by the lowest price cap LEC in the state, which in Iowa is CenturyLink. Given the volumes at issue, the functionally equivalent service offered by CenturyLink would be a direct connection, which as I explained earlier would result in an effective per-minute rate of between **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** per-minute. Suffice it to say, INS's rates exceed that rate.

41. I understand that, under the Commission's rules, a LEC is presumed to be engaged in access stimulation if the ratio of its terminating to originating access traffic is 3:1 or greater. INS's ratio of terminating to originating traffic easily exceeds the 3:1 ratio. For example, in July 2014, the number of minutes INS billed AT&T for terminating interstate CEA traffic was more than 30 times higher than the number of minutes INS billed AT&T for originating interstate CEA

traffic. In fact, since 2012, INS's monthly ratio of terminating to originating traffic for AT&T's INS traffic has well exceeded the 3:1 ratio in each and every month.

42. Further, INS's internal reports show exactly the same thing. The following table sets forth traffic data for the period 2008 to 2015 which shows that the ratio of INS's terminating to originating access traffic has exceeded the 3:1 ratio in every year by a wide margin.[3]

[[BEGIN HIGHLY CONFIDENTIAL]]



[[END HIGHLY CONFIDENTIAL]]

AT&T's Decision To Dispute INS's Bill And Withhold Payment.

43. Each month INS sends AT&T a bill for CEA service that contains charges for the traffic exchanged during the month immediately preceding the month in which the bill was sent. For example, the bill INS issued to AT&T in December 2013 was for the traffic that AT&T delivered to INS in November 2013.

[3] The Originating and Terminating Minute data were extracted from Ex. 2, INS Worksheet, at Aureon_02698–99.

44. As discussed above, in mid-2013, INS raised its interstate CEA rate by 44 percent, and had failed to lower its intrastate CEA rates to the level of its capped interstate CEA rate. In addition, the ratio of INS's originating to terminating traffic remained well above the 3:1 ratio and INS had done nothing to comply with the Commission's access stimulation rules.

45. In August 2013, AT&T received the first bill from INS that reflected the 44 percent increase in INS's interstate CEA rate INS filed in July 2013. INS's September and October bills also reflected this higher rate.

46. At that juncture, AT&T decided to dispute INS's September and October bills, and to that end, I sent an email to Jon Hedgecock of INS notifying INS of **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Ex. 78, Email from Jack Habiak to Jon Hedgecock (ATT-000740) (dated Nov. 8, 2013).

47. Following an exchange of correspondence and discussions between AT&T and INS personnel about the dispute, on February 28, 2014, I sent an e-mail to Dennis Creveling of INS **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted] **[[END CONFIDENTIAL]]**

48. Starting with INS's September 2013 invoice, AT&T also began withholding payment of the amounts that it believed were not being properly charged consistent with the Commission's rules and prior precedent. In calculating the amounts to be withheld, AT&T took the following steps:

49. *First*, AT&T re-rated the interstate minutes of use from the $0.00896 per-minute rate that INS had billed to $0.00819 per-minute, which as noted above is the rate at which INS's CEA rate is capped under the Commission's rules.

50. *Second*, AT&T re-rated AT&T's intrastate traffic using the interstate capped CEA switching rate of $0.00819 per-minute. In so doing, AT&T excluded all intrastate transport charges.

51. *Third*, AT&T estimated the number of minutes of INS traffic that were bound for access stimulating CLECs (at that juncture Great Lakes), and subtracted those minutes from the total minutes to which it had applied the capped interstate rate of $0.00819 per-minute. In 2016, AT&T also began withholding payment on minutes sent to BTC, Inc.; Omnitel Communications; Louisa Communications; Premier Communications; Goldfield Access Network, LLC; and Interstate Cablevision – each of which, like Great Lakes, is engaged in substantial access stimulation activities. Removing those minutes reflects AT&T's position that access stimulation traffic is not properly classified as CEA traffic, and thus is not subject to INS's CEA rates.

52. From January 2013 through March 2017, INS has billed AT&T for over **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** minutes of access traffic. Regarding AT&T's withholding, from the September 2013 invoice through the March 2017 invoice, INS has billed AT&T a total of **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted] **[[END CONFIDENTIAL]]**

53. The following table sets forth data extracted from AT&T's billing records indicating the massive volumes of traffic that INS is currently transporting on behalf of the access stimulating CLECs with which INS has contracted.

[[BEGIN CONFIDENTIAL]]

[redacted]

[[END CONFIDENTIAL]]

* * * * *

54. In closing, I note that today INS is one of the nation's largest traffic pumpers. Its own records show that it is currently pumping more than **[[BEGIN HIGHLY**

CONFIDENTIAL]] [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* Ex. 2, INS Worksheet, at Aureon_02698–99. Further, over 12 percent of AT&T's *total*, nationwide terminating switched access charges[4] are currently billed by INS – a single carrier – and approximately 90 percent of the traffic AT&T sends to INS is access stimulation traffic (the remaining 10% or so is the legitimate CEA traffic for which INS was created). Given that AT&T currently receives bills for terminating switched access from approximately 1,300 LECs, the fact that one carrier accounts for almost 1/8th of the charges is a red flag that a problem exists that needs to be fixed. Finally, as can be seen from the following table, AT&T's traffic on INS's network has been steadily increasing since 2013, notwithstanding the Commission's stated goal of "curtailing" access stimulation traffic.

[[BEGIN CONFIDENTIAL]]

[redacted]

[[END CONFIDENTIAL]]

[4] This excludes traffic terminated to AT&T's affiliated ILECs.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on May 23 2017.

John W. Habiak

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(202) 457-3090** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

DECLARATION OF DANIEL P. RHINEHART

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"). My job title is Director - Regulatory. My current responsibilities include participating in regulatory dockets and litigation matters on behalf of various AT&T entities in the areas of cost analysis and universal services matters. I also direct the development of AT&T's pole attachment and conduit occupancy rates pursuant to standard FCC formulas, and I support the analysis of third-party pole attachment rates. I have been employed by AT&T and its predecessors since 1979 and have held a number of different jobs with increasing responsibilities in the finance and regulatory areas. Over the years, I have testified in a number of different federal and state rate cases regarding the reasonableness of rates filed by AT&T and by other carriers. My curriculum vitae is included as Exhibit 82 to the Formal Complaint.

2. As a result of my experience, I am very familiar with the manner in which rates are calculated by Local Exchange Carriers ("LECs") that are regulated on a rate of return basis. In addition, I have reviewed the bi-annual tariff filings made by Iowa Network Services, Inc. d/b/a Aureon Network Services ("INS")[1] as well as various documents that have been produced in discovery in this case or in other proceedings relating to access stimulation. I have also reviewed the various Commission decisions approving Centralized Equal Access ("CEA") service in Indiana, Iowa, South Dakota and Minnesota[2] as well as other Commission decisions relating to access stimulation.[3] In addition, I have reviewed INS's recent tariff filings, which

[1] *See* Ex. 15, INS Introduction, Overview and Rate Development, July 1, 2004 FCC Annual Access Charge Tariff Filing (dated June 24, 2004) ("INS 2004 Tariff Filing"); Ex. 16, INS Introduction, Overview and Rate Development, July 3, 2006 FCC Annual Access Charge Tariff Filing (dated June 26, 2006) ("INS 2006 Tariff Filing"); Ex. 17, INS Introduction, Overview and Rate Development, July 1, 2008 FCC Annual Access Charge Filing (dated June 24, 2008) ("INS 2008 Tariff Filing"); Ex. 18, INS Introduction, Overview and Rate Development, July 1, 2010 FCC Annual Access Charge Filing (dated June 16, 2010) ("INS 2010 Tariff Filing"); Ex. 19, INS Introduction, Overview and Rate Development, July 3, 2012 FCC Annual Access Charge Filing (dated June 26, 2012) ("INS 2012 Tariff Filing"); Ex. 20, INS Introduction, Overview and Rate Development, July 2, 2013 FCC Annual Access Charge Filing (dated June 17, 2013) ("INS 2013 Tariff Filing"); Ex. 21, INS Introduction, Overview and Rate Development, July 1, 2014 FCC Annual Access Charge Filing (dated June 16, 2014) ("INS 2014 Tariff Filing"); and Ex. 22, INS Introduction, Overview and Rate Development, July 1, 2016 FCC Annual Access Charge Filing (dated June 16, 2016) ("INS 2016 Tariff Filing").

[2] *In re Application of Ind. Switch Access Div.*, File No. W-P-C-5671, 1986 WL 291436, ¶¶ 2, 23 (F.C.C. Apr. 10, 1986) ("*Indiana Switch CCB Order*"); *In re Application of Ind. Switch Access Div.*, 1 FCC Rcd. 634, ¶ 5 (1986) ("*Indiana Switch Review Order*") (collectively, the "*Indiana Switch Orders*"); *In re Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶ 3 (1988) ("*INS Order*"); *In re Application of SDCEA, Inc.*, 5 FCC Rcd. 6978, ¶ 17 (1990) ("*SDCEA Order*"); Ex. 12, Memorandum Opinion, Order and Certificate, *In re the Application of Minn. Indep. Equal Access Corp.*, File No. W-P-C-6400 (F.C.C. rel. Aug. 22, 1990) ("*MIEAC Order*").

[3] *See In re Connect America Fund*, 26 FCC Rcd. 17763 (2011) ("*Connect America Order*"); *In re Access Charge Reform*, 16 FCC Rcd. 9923 (2001) ("*CLEC Access Order*"); *In re Access Charge Reform*, 19 FCC Rcd. 9108 (2004); *Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, 22 FCC Rcd. 17973 (2007) ("*Farmers I*"); *Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, 24 FCC Rcd. 14801 (2009) ("*Farmers II*").

initially proposed to offer a new contract tariff service specifically targeted at access stimulation traffic[4] but then withdrew that proposal and replaced it with a "volume discount" proposal.[5]

3. Based on my analysis to date, serious questions exist regarding the reasonableness of INS's rates for CEA service. As explained in greater detail below, INS's current rate for CEA service is $0.00896 per minute, which is only a few tenths of a cent lower than INS's initial rate for CEA service ($0.0117 per minute), which became effective in 1989. Moreover, INS's current rate is approximately 44 percent higher than it was in mid-2013 ($0.00623 per minute). Suffice it to say, these trends are not consistent with the general industry trends for access charges, which have declined precipitously since 1989.

4. To date, INS has not produced all of the cost information supporting its CEA rate calculations. Consequently, my evaluation of the reasons that INS's rates have not declined consistent with the industry trends for access charges is ongoing. Based on my review to date, however, I have the following observations:

First, the level of the network costs allocated to INS's Access Division appears to be excessive. INS's Access Division does not own any of the transmission

[4] *See* Ex. 46, Iowa Network Services, Inc. dba Aureon Network Services, Iowa Network Access Division, Tariff F.C.C. No 1, (Transmittal No. 33) (Description and Justification and Cost Support Material) (filed April 14, 2017) ("Contract Tariff Support") and Proposed Revised Tariff Pages (filed April 14, 2017) ("Revised Tariff Pages") (collectively, "INS April 2017 Revised Tariff Filing").

[5] *See* Ex. 47, Iowa Network Access Division, Application No. 8 (dated May 16, 2017) with attachments ("INS May 2017 Revised Tariff Filing," together with the tariff filings identified in *supra* notes 1 and 4, collectively referred to herein as the "Tariff Filings" or "INS's Tariff Filings") (seeking permission to (i) withdraw the tariff pages submitted under Transmittal No. 33 and (ii) file revised tariff pages proposing to offer a "volume discount").

facilities or equipment that it uses in connection with its CEA service. Instead, it leases those facilities and equipment at rates that appear to exceed the rates at which INS leases such facilities and equipment to other entities, thereby inflating INS's CEA rates and raising concerns regarding the cross-subsidization of INS's other services.

Second, in recent years an increasing percentage of the costs of INS's Cable &Wire Facilities have been allocated to INS's Access Division. In 2017, for example, 74.1 percent of those costs were assigned to the Access Division whereas in 2006, the Access Division was only assigned 45.3 percent of those costs.

Third, questions exist as to the reasonableness of INS's calculation of the lease costs allocated to the Access Division. As explained in greater detail below, there are **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** INS provides absolutely no support for the derivation of these costs. Further, additional concerns arise when the dramatic increase in INS's investment in Cable & Wire facilities since 2010 is contrasted with the significant decline in switched access minutes of use transported on INS's network.

Fourth, in recent years an increasing percentage of the Access Division's revenue requirement has been allocated to interstate traffic as opposed to intrastate traffic.

This development stands in stark contrast to the assumption underlying the Commission's initial approval of INS's application to provide CEA service; namely, that "the majority of the network's costs w[ould] be recovered from intraLATA toll calls." *See INS Order* ¶ 32.

Fifth, concerns also exist as to the five-year traffic forecasts that INS has used in developing its rates for CEA service. Those forecasts vary widely from year to year and have proven to be very inaccurate when compared to INS's actual demand. Additionally, INS's recent forecasts showing declining demand stand in stark contrast to AT&T's actual traffic on INS's network, which has steadily grown.

Sixth, since 2010, INS has included in its revenue requirement large "Uncollectible Revenues" even though those amounts remain the subject of litigation contesting whether they were "properly billed" and INS is still actively seeking to collect them. The inclusion of those amounts in the Access Division's revenue requirement had a potential rate impact of between .073 and .659 cents per minute.

5. Each of these concerns is discussed in greater detail below.[6]

[6] The first, second, and third concerns regarding network costs apply with equal force to INS's recent Tariff Filings, first offering a new contract tariff service (*see* Ex. 46, INS April 2017 Revised Tariff Filing) and then seeking to replace that offering with a new "volume discount" service. *See* Ex. 47, INS May 2017 Revised Tariff Filing.

The Overall Level of INS's CEA Rates.

6. INS's application to provide CEA service in Iowa was approved in 1988, and INS filed its original tariff for that service in early 1989. As initially filed, the rate that INS proposed to charge for CEA service was $0.0161 per minute. *See In re Iowa Access Division Tariff FCC No.1*, 4 FCC Rcd. 3947, ¶ 9 (C.C.B. Apr. 28, 1989) ("*INS Rate Order*"). A number of parties, including AT&T and Northwestern Bell Company ("NWB"), challenged INS's proposed rate on a number of grounds, including that it was not adequately supported. *Id.* ¶¶ 2–7. Rather than litigate those issues, INS revised its tariff filing and lowered its rate to $0.0117 per minute. *Id.* ¶ 9.

7. Since 1989, INS's CEA rate has remained at roughly the same level. The following table (Table A) sets forth INS's rates for CEA service for the period 2003 to 2017.[7]

	INS's CEA Rate
2003	$0.01045 per minute
2004	$0.01045 per minute/$0.01031 per minute
2005	$0.01031 per minute
2006	$0.01031 per minute/$0.00855 per minute
2007	$0.00855 per minute
2008	$0.00855 per minute/$0.00819 per minute
2009	$0.00819 per minute

[7] These rates are reported in the INS Tariff Filings that are publicly available on the FCC's website. *See* Exs. 15–22. Rate information for periods prior to 2003 is not available on the FCC's website.

2010	$0.00819 per minute
2011	$0.00819 per minute
2012	$0.00819 per minute/$0.00623 per minute
2013	$0.00623 per minute/$0.00896 per minute
2014	$0.00896 per minute
2015	$0.00896 per minute
2016	$0.00896 per minute
2017	$0.00896 per minute

As can be seen from Table A, INS's current CEA rate ($0.00896 per minute) is about three tenths of a cent lower than the rate for that service in 1989 ($0.0117 per minute), and is approximately 44 percent higher than the rate in mid-2013 ($0.00623 per minute).

8. The fact that INS's current CEA rate has not declined more significantly during the past 27 years is surprising given the overall trend in the industry with regard to access charges. In a 2010 report entitled "Trends in Telephone Service," the Commission reported that the national average traffic sensitive interstate switched access charge per minute went from $0.030 (in April 1989) to $0.0064 (in 2010)[8] – a decline of almost 79%. During that same period, INS's CEA rate only declined by about 23 percent. Moreover, the situation has gotten worse since 2011. The national average charge per minute for access has continued to decline as the Commission's 2011 transitional rules have begun to take effect.[9] By contrast, INS raised its

[8] *See* Ex. 57, FCC, *Trends in Telephone Service*, Table 1.2 (W.C.B. Sept. 2010), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[9] *Connect America Order* ¶¶ 739, 798–808 (providing that local switching rates would be eliminated by mid-2017); *see also* 47 C.F.R., Subpart J of Part 51.

CEA rate from its 2011 capped level of $0.00819 per minute to its current level of $0.0896 per minute.

9. The high level of INS's current CEA rate is particularly difficult to understand given the fact that INS's investment in the switching equipment needed to provide equal access and in related general support facilities has largely been depreciated and recovered in INS's prior rates.[10] In addition, during the period 2005 to 2011, the volume of interstate access minutes transported over INS's network grew from about 954 million minutes per year to over 3.8 billion minutes per year. *See* Exs. 16 and 19, INS Tariff Filings for 2006 and 2012. All else held constant, these two factors working in combination should have resulted in a significant decline in INS's CEA rates.[11] But that did not occur. In 2005, INS's rate was $0.01031 per minute. *See* Ex. 16, INS 2006 Tariff Filing, at 3. As previously noted, INS's current rate is $0.00896 per minute – a decline of only slightly more than one tenth of a cent.

10. INS's CEA rates also do not appear to reflect any cost efficiency gains resulting from advances in transmission technology. In its Tariff Filings, INS has reported that it has made significant investments in its fiber network.[12] Those investments, however, do not appear

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[10] *See* Ex. 22, INS 2016 Tariff Filing, Section 5, Schedule S-2 (indicating that the $37 million in Total Plant in Service allocated to INS's Access Division has been largely depreciated with accumulated depreciation and amortization totaling $34 million).

[11] S*ee also Farmers I* ¶ 24 (crediting testimony demonstrating that an access stimulation LEC's "costs did not rise by nearly the same proportion as its access revenues"); Ex. 67, Declaration of Peter D. Copeland, *Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, File No. EB-07- MD-001, ¶¶ 5–14 (dated May 1, 2007) ("Copeland Decl.") (making the same point).

[12] *See* Ex. 18, INS 2010 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity . . . . Approximately $20 million has been expended since 2006 and an additional $4.5 million is planned for 2010."); Ex. 19, INS 2012 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . .

to have resulted in lower CEA rates. Indeed, in its 2016 Tariff Filing, INS asserted that its projected revenue requirement would support a rate of $0.01332 per minute,[13] which is almost two tenths of a cent higher than INS's interstate CEA rate in 1989 (i.e., $0.0117 per minute). A rate at that level is not consistent with the rate that one would expect given INS's recent "upgrades" to its network. *See* Ex. 67, Copeland Decl. ¶¶ 11–14.

11. That INS's rates for CEA service are excessive is also clear from INS's recent Tariff Filings. As discussed in greater detail below, INS's inclusion of "Uncollectible Revenues" in the revenue requirement supporting its 2016 Tariff Filing had the potential effect of inflating INS's CEA rate by as much as $0.00659 per minute. *See infra*, Table J. Indeed, if those Uncollectible Revenues were removed from the underlying revenue requirement, the resulting rate generated by INS revenue analysis would decline from $0.01332 per minute to $0.00673 per minute, which is more than two tenths of a cent less that INS's current CEA rate ($0.00896 per minute).

12. INS's even more recent Tariff Filings proposing to offer a new rate of $0.00649 per minute for high volume (access stimulation) traffic also demonstrate that INS's current CEA rate is excessive. *See* Ex. 46, INS April 2017 Revised Tariff Filing; Ex. 47, INS May 2017

Approximately $9.6 million has been expended since 2009 and an additional $11.3 million is planned for 2012."); Ex. 20, INS 2013 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $20.3 million has been expended since 2010 and an additional $22.5 million is planned for 2013." (internal footnote omitted)).

[13] *See* Ex. 22, INS 2016 Tariff Filing, at 5; *see also* Ex. 21, INS 2014 Tariff Filing, at 4 (projecting a rate of $0.01297 per minute).

Revised Tariff Filing. [14] The cost support material presented in connection with INS's April 2017 Tariff Filing purports to show that a rate of $0.00604 per minute would be sufficient to support INS's projected revenue requirement, which does not include any Uncollectible Revenues. *See* Ex. 46, INS's April 2017 Tariff Filing, Contract Tariff Support at 2, 5, Section 2 (Schedule A), and Section 3 (Schedule S-1, Line 15). That rate ($0.00604 per minute) is almost three tenths of a cent less than INS's current rate ($0.00896 per minute). Moreover, when the minimum traffic volumes associated with INS's May 2017 "volume discount" proposal (a minimum of 25 million minutes per month/300 million minutes per year) are applied to the revenue requirement submitted in support of the proposed rate of $0.00649 per minute, the resulting rate would be $0.003624 per minute, which is more than five tenths of a cent lower than INS's current rate ($0.00896 per minute).[15]

[14] As initially proposed, this service was to be offered on a contract tariff basis. *See* Ex.46, INS April 2017 Revised Tariff Filing. However, on May 16, 2017, INS filed an application with the Commission seeking permission to withdraw its proposed contract tariff service, and to instead offer a volume discount to customers (i) with a minimum monthly usage of "at least 25 million interstate interlata terminating minutes-of-use and 80% or greater utilization of each trunk group" and (ii) that agreed to sign a separate service agreement. *See* Ex. 47, INS May 2017 Revised Tariff Filing, Second Revised Tariff Page 137, Section 6.7.3. In its May 2017 Tariff Filing, INS does not provide any specific details as to the terms of the "separate service agreement," nor does it indicate whether those terms are the same or similar to the additional terms that were applicable to the proposed contract tariff service it has now withdrawn. *See* Ex. 46, INS April 2017 Revised Tariff Filing, Contract Tariff Support at 1; *see also* AT&T Formal Complaint ¶ 74 (discussing the terms applicable to INS's proposed contract tariff service).

[15] In submitting its May 2017 Tariff Filing, INS did not modify or present a new rate analysis in support of the proposed rate of $0.00649 per minute. In its April 2017 Tariff Filing, the projected revenue requirement presented in support of the $0.00649 rate was $1,087,200. *See* Ex. 46, INS April 2017 Revised Tariff Filing, Contract Tariff Support at 2, 3, and Section 2 (Schedule A). When that revenue requirement ($1,087,200) is divided by the minimum annual throughput required to qualify for the $0.00649 "volume discount" rate (300 million minutes), the resulting rate is $0.003624 per minute. Moreover, the surplus over the base revenue requirement generated by imposition of the $0.00649 per minute rate is $859,800 per year.

13. Finally, the evidence shows that over the past 15 years, INS has dramatically lowered the rates that it charges for some of its non-CEA services. For example, in the **[[BEGIN 3P CONFIDENTIAL]]** [redacted] **[[END 3P CONFIDENTIAL]]** Additionally, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**[18]

INS's Handling of Network Investment Costs.

14. As previously noted, INS has reported in its Tariff Filings that it made significant investments in its fiber network.[19] None of that investment, however, has been recorded on the books of INS's Access Division. Instead, as is clear from INS's Tariff Filings, all investment in

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[16] *See* Ex. 68, Deposition of Thomas Lovell, *Alpine Commc'ns, LLC v. AT&T Corp.*, No. 2:08-cv-01042, at 56:9–58:9 (N.D. Iowa) (taken Oct. 29, 2009).

[17] *See* Ex. 23, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[18] *See* Ex. 15, INS 2004 Tariff Filing at 2 (noting that the agreements "remove[d] interstate traffic from the network and replace[d] it with interconnection traffic to be billed in accordance with interconnection agreements").

[19] *See supra* note 13.

Central Office Transmission Equipment (Account 2230) and Cable & Wire Facilities (Account 2410) has been recorded on the books of INS's other divisions.[20] As a consequence, the Access Division does not earn a rate of return on INS's investment in its network. Rather, INS's Access Division appears to lease fiber capacity from INS's Network Division at a rate and rate of return that is not disclosed in INS's tariff filings, or in the support data that INS has produced as part of the informal discovery process.[21]

15. As can be seen from the following table (Table B), network costs constitute a significant percentage of the Access Division's overall revenue requirement:

	Rev. Req. Less Uncollectibles[22]	Network Costs [23]	Percentage
2004	$21,063,949	$12,777,678	60.7%
2006	$27,790,646	$17,693,096	63.7%

[20] *See* Exs. 15–22, INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016 Tariff Filings, Section 5, Schedule S-2, Lines 3 and 4 (Central Office Transmission Equipment and Cable & Wire Facilities).

[21] From the documents that INS has produced in response to informal discovery, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]].**

[22] The data for the Access Division's "Revenue Requirement less Uncollectibles" was derived from Section 5, Part 64 Separations, Schedule S-1, Lines 15 and 19, of INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, 2016, and April 2017 Tariff Filings. *See* Exs. 15–22 & 46. The "uncollectible revenues" subtracted from the Revenue Requirement for each year are as follows: $271,799 (2004); $284,299 (2006); $3,369,633 (2008); $3,120,000 (2010); $2,690,638 (2012); $4,320,000 (2013); $3,992,932 (2014); $16,816,800 (2016); and $18,642,577 (Apr. 2017). *Id.*

[23] The Access Division's Network Costs are sourced from Section 5, Part 64 Separations, Schedule S-8, Line 4 (Cable & Wire Facilities) of INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, 2016, and April 2017 Tariff Filings. *See* Exs. 15–22 & 46.

2008	$28,275,864	$16,968,588	60%
2010	$31,522,883	$17,882,154	56.7%
2012	$21,512,296	$9,754,800	45.3%
2013	$26,219,366	$13,843,200	52.8%
2014	$27,829,176	$18,248,747	65.6%
2016	$18,794,588	$12,840,050	68.3%
2017	$19,441,960	$14,675,151	75.5%

Notwithstanding the magnitude of these costs, INS's Tariff Filings do not provide any information regarding the derivation of the lease costs that INS's Access Division pays to INS's Network Division for Cable & Wire Facilities.

16. In the initial INS tariff proceeding held in 1989, NWB asserted that the Access Division was paying all of the costs to construct and maintain INS's network, including a rate of return of over 30 percent. *See INS Rate Order* ¶ 6. Obviously, such a rate of return would be excessive. More recent deposition testimony suggests that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

17. In the discovery materials that INS has recently produced in this case, there is evidence that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[24] *See* Ex. 69, Deposition of Dennis Creveling, *Alpine Commc'ns, LLC v. AT&T Corp.*, No. 08-01042, at 28:3–29:6 (N.D. Iowa) (taken Feb. 10, 2010) ("Creveling Dep.").

[redacted] **[[END HIGHLY CONFIDENTIAL]]** Obviously, to the extent that the rate that INS pays to lease circuits on INS's network is inflated, its CEA rate will also be inflated.

INS's Allocation of Costs for Network Facilities.

18. Another area of concern relates to INS's allocation of the costs associated with the Access Division's use of INS's fiber network. The following table (Table C) sets forth data from INS's Tariff Filings showing the allocation of costs for Cable & Wire Facilities between INS's Access Division and its other divisions.[28]

[25] *See, e.g.*, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[26] *See, e.g.*, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[27] **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[28] The source of the Total Company and Access Division costs is the back-up to INS's 2004 to April 2017 Tariff Filings, Section 5, Part 64 Separations, Schedule S-8, Line 4 (Cable & Wire Facilities). *See* Exs. 15–22 & 46.

	Total Company	Access Division	Percent Allocated
2004	$26,868,987	$12,777,678	47.6%
2006	$39,072,861	$17,693,096	45.3%
2008	$35,307,201	$16,968,588	48.1%
2010	$25,211,234	$17,882,154	70.9%
2012	$14,457,480	$9,754,800	67.5%
2013	$18,592,129	$13,843,200	74.5%
2014	$22,946,170	$18,248,747	79.5%
2016	$17,861,701	$12,840,050	71.9%
2017	$19,816,729	$14,675,151	74.1%

19. As can be seen from this table, the Access Division's allocated share of the costs of the Cable & Wire Facilities went from about 45% to 48% (during 2004–2008) to above 70% (in 2013–2017). By contrast, between 2004 and 2016, the Cable & Wire Facilities costs allocated to INS's other divisions actually declined from about $14 million in 2004 to about $5 million in 2017.[29] No explanation is provided in INS's Tariff Filings for this change, nor is the manner in which these costs were allocated discussed in any detail. Obviously, to the extent that Cable & Wire Facility costs are being over allocated to INS's Access Division, INS's CEA rates would be overstated.

[29] *See* Exs. 15–22 & 46, INS's Tariff Filings, Section 5, Part 64 Separations, Form S-8, Line 4 (Cable & Wire Facilities).

INS's Calculation of the Lease Costs to be Allocated to the Access Division.

20. An additional area of concern relates to INS's calculation of the lease costs to be allocated to the Access Division. As previously mentioned, no explanation is provided—in either INS's Tariff Filings or in the back-up support data produced as part of the informal discovery process—as to the basis for, or the methodology used in, calculating the lease costs allocated to the Access Division.

21. Presumably, the lease cost allocated to INS's Access Division is intended to recover the costs associated with the Access Division's use of INS's fiber network. However, a breakdown of the specific network costs included in the allocated lease costs has not been made available, nor has any explanation been provided as to why a lease cost approach has been used with respect to the Access Division's network costs but not with respect to any of its other costs, such as switching costs.[30] Further, a review of the cost information that has been produced raises serious questions as to the reasonableness of INS's allocation of network costs to the Access Division.

[30] The back-up material produced by INS indicates that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** However, none of the back-up material that has been produced explains the methodology used to calculate the amount of the lease costs to be allocated and paid by the Access Division or any of INS's other divisions.

22. The following table (Table D) sets forth **[[BEGIN HIGHLY CONFIDENTIAL]]**

[redacted]

[[END HIGHLY CONFIDENTIAL]]

23. At a minimum, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** During this same period, INS's tariffed rate for CEA service first decreased by about 23 percent (2010 to 2012)

[31] **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

and then increased by about 44 percent (2012 to 2013). Obviously, the extent to which the 2013 increase in CEA rates was caused by the allocation of costs to the Access Division that had been previously allocated to other INS divisions would raise concerns about cross-subsidization.[32]

24. Another area of concern as to the efficacy of INS's lease cost calculations arises as a result of the dramatic increase in INS's investment in Cable & Wire Facilities (beginning in 2010). The following table (Table E) depicts the Total Company investment levels for Cable & Wire Facilities reported in INS's Tariff Filings from 2004 to 2017.[33]

	Cable & Wire Investment (Total Co.)
2004	$21,331,701
2006	$21,721,264
2008	$23,377,974
2010	$26,818,101
2012	$43,102,372

[32] As can be seen from INS's Tariff Filings, the 2013 increase in INS's CEA rate was at least partially the result of a $4 million increase in lease costs. More specifically, the Access Division's projected revenue requirement went from $24,202,934 (in 2012) to $30,539,366 (in 2013), most of which appears to be the result of a $4.1 million increase in Cable & Wire Facilities costs, *i.e.*, the lease costs that INS's Access Division pays to INS's Network Division. *See* Exs. 19 and 20, INS's 2012 and 2013 Tariff Filings, Section 5, Part 64 Separations, Schedule S-8, Line 4; *see also* **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[33] The source of the Total Company investment in Cable & Wire Facilities is Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) of INS's 2004 to 2017 Tariff Filings. *See* Exs, 15–22 & 46.

2013	$57,085,004
2014	$59,282,926
2016	$74,866,654
2017	$68,284,259

25. As can be seen from Table E, INS's investment in Cable & Wire Facilities was relatively constant from 2004 to 2010 but then almost triples between 2010 and 2016. In its Tariff Filings, INS explained that this investment was being made to "upgrade its fiber routes and electronics."[34] That explanation, especially the planned expenditure of "an additional $22.5 million … for 2013" (*see* Ex. 20, INS 2013 Tariff Filing, at 2) is extremely difficult to justify given that demand for legitimate CEA service has steadily declined **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**, [35] the Access Division's overall interstate throughput has declined significantly since 2011,[36] and in 2011, the

[34] *See* Ex. 18, INS 2010 Tariff Charge Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity . . . . Approximately $20 million has been expended since 2006 and an additional $4.5 million is planned for 2010."); Ex. 19, INS 2012 Tariff Filing at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $9.6 million has been expended since 2009 and an additional $11.3 million is planned for 2012."); Ex. 20, INS 2013 Tariff Filing at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately $20.3 million has been expended since 2010 and an additional $22.5 million is planned for 2013.").

[35] *See* AT&T Complaint, Section I.B; *see also* **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**.

[36] *See infra* Table H, showing that INS's annual throughput peaked in 2011 at about 3.8 billion minutes and thereafter has steadily declined. In the 2013, for example, the throughput was about 2.8 billion minutes – a decline of approximately a billion minutes in a two year period.

Commission found that access stimulation was a "wasteful arbitrage" practice and took steps to "curtail" it. *See Connect America Order* ¶¶ 648–49, 662–63.[37]

26. That INS has over allocated its network costs to the Access Division also draws support when one considers the lease cost per minute of use ("mou") allocated to INS's Access Division. The following table (Table F) sets forth data relating to this metric.

Test Period	Projected Lease Cost[38]	Projected Demand[39]	Lease cost/mou
7/1/04 to 6/30/05	$5,421,825	876,231,538 minutes	$0.0062
7/1/06 to 6/30/07	$6,891,903	1,296,905,198 minutes	$0.0053
7/1/08 to 6/30/09	$11,351,187	2,346,089,248 minutes	$0.0048
7/1/10 to 6/30/11	$14,478,572	3,481,819,561 minutes	$0.0042
7/1/12 to 6/30/13	$8,256,765	3,339,631,164 minutes	$0.0025
7/1/13 to 6/30/14	$11,669,499	2,925,535,070 minutes	$0.0040
7/1/14 to 6/30/15	$14,817,782	2,019,322,322 minutes	$0.0073
7/1/16 to 6/30/17	$11,604,439	2,508,443,160 minutes	$0.0046

[37] **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[38] The source of "Projected Lease Cost" is Section 3, Schedule A-8, Line 5, in AT&T's Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

[39] The source of the "Projected Demand" is INS's Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

27. As can be seen from Table F, the lease cost per mou allocated to the Access Division steadily declined until about 2013 and then almost doubled in 2014. Some of that increase was undoubtedly attributable to a decline in projected throughput. However, to the extent that INS's allocation of costs between its various operating divisions was based on projected demand for service, it is difficult to understand why the Access Division's projected lease costs also increased during this period. One explanation is that INS has over-allocated its network costs to the Access Division – a conclusion that also draws support from the fact that during this same period, the Access Division's Network Costs as a percentage of its revenue requirement less uncollectibles was also rapidly increasing. *See supra* Table C.[40]

INS's Allocation of Costs Between Interstate and Intrastate Traffic.

28. Another area of concern relates to the allocation of the Access Division's projected revenue requirement between interstate and intrastate long distance traffic. In initially approving INS's application to provide CEA service in Iowa, the Commission specifically noted INS's assumption that "the majority of the network's costs w[ould] be recovered from intraLATA toll calls" and cautioned that if that assumption changed materially, the Commission would need to review INS's proposal. *See INS Order* ¶ 32.

29. As can be seen from the following table (Table G), for periods prior to 2008 that assumption held true – the majority of the Access Division's revenue requirement was allocated

[40] Because INS has not provided any detail as to the basis for the calculation of the lease costs allocated to the Access Division, it is not possible to determine on the current record exactly how much of INS's recent fiber investment has been charged to the Access Division.

to intrastate CEA service.[41] In 2008, however, that situation changed dramatically. Since then, the vast bulk of the Access Division's revenue requirement has been assigned to interstate CEA service. Indeed, in 2016, almost 94% of the Access Division's revenue requirement was allocated to interstate traffic.

Year	Access Division	Interstate	Intrastate	Percentage Interstate
2004	$21,355,748	$9,065,913	$12,269,835	42.5%
2006	$28,074,946	$11,092,328	$16,982,618	39.5%
2008	$31,645,497	$19,270,037	$12,375,565	60.9%
2010	$34,642,883	$28,671,480	$5,971,403	82.8%
2012	$24,202,934	$20,839,116	$3,363,618	86.1%
2013	$30,539,366	$26,254,447	$4,284,919	86.0%
2014	$31,822,108	$26,211,200	$5,610,908	82.4%
2016	$35,611,388	$33,428,538	$2,182,850	93.9%

30. One possible explanation for this dramatic shift is that in 2008 INS adjusted the PIU factor used in its tariff filings to "more accurately classif[y] the jurisdiction of . . . call aggregator traffic." *See* Ex. 17, INS 2008 Tariff Filing, at 1–2. As INS explained, this change resulted in the PIU factor for calls associated with call aggregation increasing from 48 percent to 78 percent. *Id*. at 3–4. In other words, an additional 30 percent of the call aggregation traffic was assigned to the interstate jurisdiction.

31. In making this change, INS did not bring to the Commission's attention that a key assumption underlying the Commission's initial approval of CEA service in Iowa had changed,

[41] The Access Division's Revenue Requirement data are sourced from Section 4, Schedule S-1, Line 19, of INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016 Tariff Filings. *See* Exs. 15–22.

nor did it point out that this change had had an enormous impact on cost allocation between the interstate and intrastate jurisdictions. As depicted in the table above, the "majority of [INS's] network's costs" are no longer being recovered from intrastate CEA service. *See INS Order* ¶ 32. Instead, most of the costs are now recovered from interstate traffic.

32. Further, there seems to be a disconnect between the 78 percent PIU factor that INS adopted in 2008 and the percentage of costs INS has allocated to interstate CEA service since 2008. As shown in Table G, the percentage of costs allocated to the interstate jurisdiction started out well below the 78 percent PIU factor in 2008 (60.9 percent) but now exceeds that factor by a wide margin (93.9 percent in 2016). Obviously, to the extent that these allocations were not properly made, INS's CEA rates could be distorted. Moreover, the potential problems are exacerbated by the fact that INS does not appear to have adjusted its intrastate rates since the early 1990s. *See* Habiak Decl. ¶ 38.

33. Finally, to the extent that INS has understated the interstate PIU factor for access stimulation traffic, its interstate CEA rates could be inflated. In its 2008 Tariff Filing, for example, INS indicated that for its 2009 test period, it was projecting "1.6 billion terminating conference call minutes generated by call aggregators," of which 78 percent were rated as interstate. *See* Ex. 17, INS 2008 Tariff Filing, at 3–4. If, in fact, a significantly larger percentage of those calls were interstate (say 98 percent), INS's interstate CEA rate for that test period would necessarily be lower, assuming all other assumptions remained the same.

The Reliability of INS's Traffic Forecasts.

34. A further area of concern relates to the reliability of the traffic forecasts used by INS in developing its CEA rates. The following table (Table H) sets forth the test period traffic forecasts used by INS in its Tariff Filings from 2004 to 2017 and then compares those forecasts to a simple average of the actual demand reported by INS in its Tariff Filings for the two years encompassed by the applicable test period forecast.

Test Period	Projected Demand[42]	Actual Demand[43]	Difference
7/1/04 to 6/30/05	876,231,538 min.	930,533,227 min.	54,301,689 min.
7/1/06 to 6/30/07	1,296,905,198 min.	1,707,544,370 min.	410,639,172 min.
7/1/08 to 6/30/09	2,346,089,248 min.	2,576,662,181 min.	230,572,933 min.
7/1/10 to 6/30/11	3,481,819,561 min.	3,756,655,810 min.	274,836,249 min.
7/1/12 to 6/30/13	3,339,631,164 min.	3,165,619,256 min.	(174,011,908) min.
7/1/13 to 6/30/14	2,925,535,070 min.	2,742,967,138 min.	(182,567,932) min.
7/1/14 to 6/30/15	2,019,322,322 min.	2,470,990,085 min.	451,667,763 min.
7/1/16 to 6/30/17	2,508,443,160 min.	na	na

35. As can be seen from Table H, there was a lot of variation from year to year in INS's test period traffic forecasts. Table H also shows that INS's test period traffic forecasts were not

[42] The source of the "Projected Demand" is INS's Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

[43] This figure is a simple average of the actual demand reported by INS in its Tariff Filings for the two year period encompassed within the test period. Thus, for example, the actual demand compared to Projected Demand for the test period 7/1/04 to 6/30/05 would be a simple average of the reported actual demand for 2004 and 2005.

very accurate when compared to actual demand. Indeed, for the test periods up to and including the 7/1/10 to 6/30/11 test period, INS consistently underestimated demand by an average of 240 million minutes per year. Further, for two test periods (7/1/06 to 6/30/07 and 7/1/14 to 6/30/15), INS underestimated the demand by at least 400 million minutes.

36. Because INS's CEA rates are derived by dividing its projected revenue requirement by its traffic forecast for the applicable test period, an underestimation of the projected demand necessarily results in a higher rate. Moreover, to the extent that the disparity is large enough, it can result in the carrier exceeding its allowed rate of return – a situation that has occurred with respect to INS's CEA service in a number of years.[44]

37. Finally, INS's test period forecasts, particularly in the more recent periods (2012 to 2016), are not consistent with AT&T's billing data which shows that AT&T's INS volumes have steadily increased over that same period. *See* Habiak Decl. ¶ 54. Obviously, to the extent that INS's test period traffic forecasts are understated, INS rates would be inflated (all other factors remaining constant).

INS's Inclusion of "Uncollectible Revenues" in its Revenue Requirement.

38. An additional area of concern relates to INS's inclusion of "Uncollectible Revenues" in its projected revenue requirement. This practice appears to have started in connection with INS's 2010 Tariff Filing, wherein it noted that during 2007, it "began to

[44] *See* Ex. 16, INS 2006 Tariff Filing, at 1 (noting that in 2005, INS experienced a return of 27.89%); Ex. 17, 2008 Tariff Filing, at 1 (for the period 2005/2006, INS experienced a return of 38.63%); Ex. 20, INS 2013 Tariff Filing, at 1 (INS's regulated revenue resulted in a "return of 64.57% on its interstate investment").

experience an increase in its uncollectible revenues from an [IXC] as a result of billing disputes over the classification and quantification of interstate access minutes related to traffic terminated by the IXC to ILEC customer locations in Iowa."[45] While the specific IXC is not identified, it is believed to be Sprint, which is involved in a lawsuit in Iowa federal district court where INS is seeking to collect unpaid tariff charges.[46] Rather than wait for that lawsuit to be resolved, INS appears to have simply included the amount of $2,893,575 in its 2010 Tariff Filing, thereby inflating its revenue requirement as well as its rates.[47] Worse yet, by seeking to recover these amounts through its rates, INS effectively required its other CEA customers (including AT&T) to pay for service that it allegedly provided to Sprint.[48]

39. The following table (Table I) identifies for each filing period since 2010, INS's Total Revenue Requirement, INS's Base Revenue Requirement (i.e., Total Revenue Requirement less Uncollectible Revenues), and the "Uncollectible Revenues" that INS has sought to recover through its CEA rates. Table I also includes, for each filing period, a calculation of Uncollectible Revenues as a percentage of the Base Revenue Requirement.

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[45] *See* Ex. 18, INS 2010 Tariff Filing, at 2. While the work papers underlying INS's 2008 Tariff Filing indicate that the Access Division's overall revenue requirement included "Uncollectible Revenues" of $3,369,633 (*see* Section 5, Part 64 Separations, Schedule S-1, Line 15), that amount was not allocated to the interstate jurisdiction for ratemaking purposes. *See id.*, Section 4, Part 36 Separations, Schedule S-1, Line 15.

[46] *See, e.g.*, *Iowa Network Servs. v, Sprint Commc'ns Co.*, No. 4:10-CV-102 (S.D. Iowa).

[47] *See* Ex. 18, INS 2010 Tariff Filing, at 2.

[48] In its April 2017 Tariff Filing, INS did not allocate any "Uncollectible Revenues" to its new contract tariff service, thus exempting those customers from having to bear any of these alleged costs. *See* Ex. 46, INS's April 2017 Tariff Filing, Contract Tariff Support, Section 3, Schedule A-1, Line 15.

	Total Rev. Req.	Base Rev. Req.	Uncollectibles	% Uncollectibles
2010	$28,671,481	$25,777,906	$2,893,575	11.2%
2012	$20,839,117	$18,377,183	$2,461,934	13.4%
2013	$26,254,447	$22,293,439	$3,961,008	17.8%
2014	$26,211,200	$22,756,744	$3,454,456	15.2%
2016	$33,428,538	$16,903,398	$16,525,230	97.8%

40. As can be seen from Table I, since 2010, INS has included in its revenue requirement calculations almost $30 million in so-called "Uncollectible Revenues." For the filing periods 2010 through 2014, Uncollectible Revenues averaged about $3.2 million per year and constituted between 11 percent and 18 percent of INS's Base Revenue Requirement. In 2016, however, that percentage increased to 97.8 percent of the Base Revenue Requirement. In other words, almost half of INS's 2016 Total Revenue Requirement consisted of Uncollectible Revenues.

41. The next table (Table J) sets forth an estimate of the potential rate impact of INS's having included these amounts in its revenue requirement.

	"Uncollectible Revenues"[49]	Projected Traffic[50]	Potential Rate Impact[51]
2010	$2,893,575	3,481,819,561	$0.00083
2012	$2,461,934	3,339,631,164	$0.00074
2013	$3,961,008	2,925,535,070	$0.00135
2014	$3,454,456	2,019,322,322	$0.00171
2016	$16,525,230[52]	2,508,443,160	$0.00659

42. As can be seen from Table J, over the period 2010 to 2016, the potential rate impact of INS's having included Uncollectible Revenues in its revenue requirement was between 0.074 cents per minute and 0.659 cents per minute. Given that all of the so-called "Uncollectible Revenues" are the subject of litigation that disputes whether the underlying rates were "properly billed," there was no justification for this rate treatment, which had the obvious impact of inflating rates.[53] Moreover, INS's counsel has admitted in response to informal discovery that **[[BEGIN**

[49] The source of the "Uncollectible Revenues" is INS's Tariff Filings for 2010, 2012, 2013, 2014, and 2016. *See* Exs. 18–22.

[50] The source of the "Projected Traffic" is INS's Tariff Filings for 2010, 2012, 2013, 2014, and 2016. *See* Exs. 18–22.

[51] The rate impact was estimated by dividing the "Uncollectible Revenues" by the projected traffic.

[52] A portion of this amount appears to relate to the charges that are the subject of dispute in this proceeding. The fact that AT&T contends that these amounts were not "properly billed" and INS is still seeking to collect them via its lawsuit against AT&T raises the same issue as to whether these amounts can properly be included in INS's revenue requirement as "Uncollectible Revenues" and recovered from INS's current customers through its rates.

[53] *In re Annual 1988 Access Tariff Filings*, 3 FCC. Rcd. 1281, ¶ 245 (1987) ("Uncollectible revenues are included in interstate revenue requirements to reflect *properly billed* revenues which cannot be collected." (emphasis added)); *In re Telecomms. Relay Serv., N. Am. Numbering*

CONFIDENTIAL]] [redacted] **[[END CONFIDENTIAL]]**

43. Finally, the inclusion of these "Uncollectible Revenues" in INS's revenue requirement (together with INS's voluntary retention of rates that are lower than the rates allegedly justified by its revenue requirement) fully explains the so-called negative rates of return that INS has reported in its recent Tariff Filings. To the extent that these "Uncollectible Revenues" are excluded from INS's revenue requirement, these negative returns either disappear or are significantly reduced. Take, for example, INS's 2016 Tariff Filing, in which INS reported a rate of return of -171.69% on a Total Revenue Requirement of $33,407,808. *See* Ex. 22, 2016 Tariff Filing, at 2, 4–5. If the "Uncollectible Revenues" ($16,525,230) are excluded from INS's Total Revenue Requirement, the projected revenues of $22,496,381 exceed the Base Revenue Requirement ($16,903,308) by about $5.6 million resulting in a positive return. It should further be noted that if the "Uncollectible Revenues" are excluded, the maximum rate that INS could charge for CEA service would be $0.00673 per minute (i,e., $0.01332 per minute minus $0.00659 per minute), which is more than two tenths of a cent lower than INS's current rate ($0.00896 per minute).[55]

Plan, 17 FCC. Rcd. 24952, ¶ 57 (2002) (noting that carriers cannot record universal service contributions as "uncollectibles" where those amounts cannot be properly billed to customers).

[54] *See* Ex. 59, Letter from James U. Troup and Tony S. Lee (Counsel for INS) to Michael J. Hunseder and James F. Bendernagel (Counsel for AT&T), at 2 (dated Mar. 23, 2017).

[55] As previously noted, INS did not allocate any "Uncollectible Revenues" to its new contract tariff/volume discount service, thus exempting the customers of that service from having to bear any of these alleged costs. *See supra* note 49. This difference in ratemaking largely appears to account for the difference between INS's current CEA rate ($0.00896 per minute) and its proposed new contract/volume discount rate ($0.00649 per minute). Indeed, when the impact of the inclusion of "Uncollectible Revenues" in its 2016 revenue requirement ($0.00659 per

The Overall Reasonableness of INS's Rates for CEA Service.

44. Based on my analysis to date, serious issues exist regarding the reasonableness of INS's rates for CEA service. Notwithstanding the fact that access rates have declined precipitously since 1989, INS's CEA rates have remained relatively constant and, in recent years, have actually increased, which makes little sense. Further, no documentation has been provided explaining the methodology used in calculating the networks costs (*i.e.*, lease costs) that have been allocated to INS's Access Division, and the evidence that has been made available strongly suggests that INS's Access Division has been allocated a disproportionate share of those costs. In addition, questions exist regarding INS's allocation of costs between its interstate and intrastate traffic. Finally, there is no justification for INS's inclusion of the so-called "Uncollectible Revenues" in the revenue requirements used to generate its CEA rates. Those amounts are the subject of ongoing litigations wherein the issue of whether those amounts were "properly billed" is at issue. Moreover, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** As such, those amounts should not have been included in the rate requirements used to generate INS's CEA rates.

minute) is subtracted from the rate INS claims is "supported" by its 2016 revenue requirement ($0.01332 per minute), the resulting rate ($0.00673 per minute) is nearly the same as its new proposed contract tariff rate of $0.00649 per minute.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on June 1, 2017.

Daniel P. Rhinehart

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(202) 457-3090** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

INFORMATION DESIGNATION

AT&T Corp. ("AT&T") submits this information designation in accordance with Sections 1.721(a)(10)(i), (ii), (iii), and 1.721(a)(11) of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. §§ 1.721(a)(10)(i), (ii), (iii) and 1.721(a)(11), and in accordance with the Commission's May 18, 2017 order granting AT&T's request for a waiver of the requirements of 47 C.F.R. §§ 1.721(a)(10)(ii), 1.724(f)(2), and 1.726(d)(2).

Individuals Believed to Have First-Hand Knowledge, Rule 1.721(a)(10)(i)

Pursuant to Section 1.721(a)(10)(i) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(i), set forth below are the names, addresses, and positions of the principal individuals at AT&T or, to AT&T's knowledge, at Iowa Network Services, Inc. d/b/a Aureon ("INS") and Great Lakes Communications Corp. ("Great Lakes"), who have first-hand knowledge of facts alleged with particularity in AT&T's Formal Complaint, and a description of the facts within any such individual's knowledge.[1]

Name	Position/Title	Address	Subject of Facts within Knowledge
Kimberly A. Meola	Executive Director – Alliance Partnership	One AT&T Way Room 4A107 Bedminster, NJ 07921	AT&T's access management operations, including fraud prevention; the impact of traffic pumping on AT&T; AT&T's policies regarding direct connections; AT&T's dealings with INS, as well as competitive local exchange carriers ("CLECs") engaged in traffic pumping; and the bases for AT&T's decision to withhold payment on INS's bills.

[1] AT&T's list includes those individuals with knowledge of the issues in dispute in the liability phase. It does not include all individuals that may have knowledge of issues that could be in dispute in any damages phase. AT&T reserves the right to designate additional persons with knowledge in any damages phase, consistent with 47 C.F.R. § 1.721(e)(1).

John W. Habiak	Carrier Relations Director	One AT&T Way Room 2A127 Bedminster, NJ 07921	AT&T's access management operations; the impact of traffic pumping on AT&T; AT&T's policies and practices regarding direct connections; AT&T's dealings and relationship with INS; amounts billed by INS under its tariff; the bases for AT&T's decision to withhold payment on INS's bills; INS's failure to comply with the Commission's access stimulation and access reform rules; and AT&T's requests for direct connections, as well as the uses, pricing of, and savings associated with such a connection.
Lyn Walker	Area Manager – Network Engineering	4480 Willow Road Room C-9 Pleasanton, CA 94588	The nature of AT&T's long-distance business and facilities used in routing calls; the routing of AT&T's long-distance calls to INS's network; the termination of the calls at issue in this case; and AT&T's request for a direct connection to the network of Great Lakes.
Daniel Rhinehart	Director – Regulatory	208 S. Akard St. Dallas, Texas 75202	LEC costs and ratemaking; INS's tariff filings and related materials

Robert Sherlock	V.P. Engineering INS	7760 Office Plaza Drive South West Des Moines, IA 50266	INS's facilities, network and services, including the facility leases provided to LECs
Dennis Creveling	CFO INS	7760 Office Plaza Drive South West Des Moines, IA 50266	INS's pricing of its services and facilities leases; structure of INS and its divisions; allocation of costs and revenues among INS divisions; rate making for INS's centralized equal access ("CEA") service and related analyses and regulatory submissions.
Joshua Nelson	CEO Great Lakes Communications Corp.	1715 McNaughton Way, Spencer, IA 51301	Relationship between Great Lakes and INS; alternatives to INS's CEA service

Documents, Data Compilations, and Tangible Things, Rule 1.721(a)(10)(ii)

Pursuant to Section 1.721(a)(ii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(ii), and the Commission's May 18, 2017 order granting AT&T's request for a waiver in connection with that provision, AT&T states that, in lieu of the requirements of stated in Rule 1.721(a)(1)(ii), AT&T is relying on the Exhibits submitted with its Formal Complaint. *See* Documents Relied Upon pursuant to Rule 1.721(a)(11), *infra*.

Identification of Persons and Documents, Rule 1.721(a)(10)(iii)

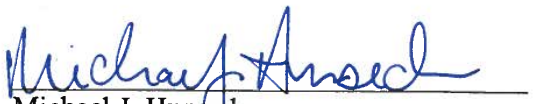
Pursuant to Section 1.721(a)(10)(iii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(iii), AT&T provides that this information designation was prepared by AT&T's outside counsel, Sidley Austin LLP, in cooperation with AT&T's in-house counsel and AT&T's

employees. Sidley Austin LLP, in coordination with AT&T's in-house counsel, identified the individuals who have first-hand knowledge of the relevant facts. Certain of the materials included among AT&T's Exhibit to the Formal Complaint were collected from the following sources: the files of Adam Panagia; the files of John W. Habiak; the files of Kimberly A. Meola; the files of Kurt Giedinghagen; the files of Larry White; the files of Lyn Walker; the files of Marion Myrick; the files of Pam Britt; the files Karen Enzor; and the files of Geri L. Lancaster. Other material was obtained (i) from INS through informal discovery, (ii) from independent research of publicly available documents, (iii) in connection with other litigation proceedings involving parties that had a relationship with INS, or (iv) otherwise in connection with preparing AT&T's Formal Complaint.

Documents Relied Upon, Rule 1.721(a)(11)

Pursuant to Section 1.721(a)(11) of the Commission's Rules, 47 C.F.R. § 1.721(a)(11), attached as exhibits to the Formal Complaint are copies of the affidavits, documents, data compilations and tangible things in AT&T's possession, custody, or control, upon which AT&T relies or intends to rely to support the facts alleged and legal arguments made in its Formal Complaint. These exhibits have been served, along with the Formal Complaint, upon INS's counsel.

Respectfully submitted,



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Dated: June 8, 2017

Counsel for AT&T Corp.

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(303) 299-5708** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

AT&T CORP.'S FIRST REQUEST FOR INTERROGATORIES TO IOWA NETWORK SERVICES, INC.

Pursuant to 47 C.F.R. § 1.729(a), Complainant AT&T Corp. ("AT&T") hereby submits to the Federal Communications Commission, and concurrently serves on Defendant Iowa Network Services, Inc. d/b/a Aureon Network Services ("INS"), this First Request for Interrogatories ("Interrogatories"). INS shall respond to these Interrogatories in the time provided by 47 C.F.R. § 1.729, in writing, under oath, and in accordance with the Commission's rules and the Instructions and Definitions set forth herein.

DEFINITIONS

1. All terms used herein shall be construed in an ordinary, common sense manner, and not in a hyper-technical, strained, overly-literal, or otherwise restrictive manner; however, acronyms and other terms of art in the telecommunications industry shall have the meaning typically ascribed to them by the industry.

2. "Any" means each, every, and all persons, places, or things to which the term refers.

3. "Communication" means any transfer of information, whether written, printed, electronic, oral, pictorial, or otherwise transmitted by any means or manner whatsoever.

4. "Concerning" means relating to, involving, reflecting, identifying, stating, referring to, evidencing, constituting, analyzing, underlying, commenting upon, mentioning, or connected with, in any way, the subject matter of the request.

5. "Copy" means any reproduction, in whole or in part, of an original document and includes, but is not limited to, non-identical copies made from copies.

6. "Describe" and "description" means to set forth fully, in detail, and unambiguously each and every fact of which you have knowledge related to answering the interrogatory.

7. "Document" means any written, drawn, recorded, transcribed, filed, or graphic matter, including scientific or researchers' notebooks, raw data, calculations, information stored in computers, computer programs, surveys, tests and their results, however produced or reproduced. With respect to any document that is not exactly identical to another document for any reason, including but not limited to marginal notations, deletions, or redrafts, or rewrites, separate documents should be provided.

8. "Free Calling Party" means a provider of high call volume operations such as chat lines, adult entertainment calls, and "free" conference calls that obtains at least some revenue from one or more local exchange carriers under an arrangement to share access revenues collected on long distance calls made to such provider.

9. "Identify," "identity," or "identification," when used in relation to "person" or "persons," means to state the full name and present or last known address of such person or persons and, if a natural person, his or her present or last known job title, the name and address of his or her present or last known employer, and the nature of the relationship or association of such person to you.

10. "Identify," "identity," or "identification," when used in relation to "document" or "documents," means to state the date, subject matter, name(s) of person(s) that wrote, signed, initialed, dictated, or otherwise participated in the creation of the same, the name(s) of the addressee(s) (if any), and the name(s) and address(es) (if any) of each person or persons who have possession, custody, or control of said document or documents.

11. "Identify" when used in relation to a "communication" means to identify the participants in each communication and, if such communication is not contained in a document, the date, place, and content of such communication.

12. "Including" means including but not limited to.

13. "Interexchange carrier" or "IXC" means a long-distance carrier who provides intrastate or interstate long-distance communications services between local exchange areas. It also includes a wireless carrier, when the wireless carrier is routing intrastate or interstate long-distance communications services for termination to a local exchange carrier.

14. "Original" means the first archetypal document produced, that is, the document itself, not a copy.

15. "Person" or "persons" means any natural person or persons, group of natural persons acting as individuals, group of natural persons acting as a group (*e.g.*, as a board of directors, a committee, *etc*.), or any firm, corporate entity, partnership, association, joint venture, business, enterprise, cooperative, municipality, commission, or governmental body or agency.

16. "Relevant Period" means December 29, 2011, to the present, unless otherwise specified.

17. "Tariff Filings" means the annual access charge tariff filings that INS made with the Commission via transmittal letters dated June 16, 2010, June 26, 2012, June 17, 2013, June 14, 2014 and June 16, 2016.

18. "Termination Services" means any service provided by any entity to deliver, in any form including but not limited to either a TDM or IP connection, a long-distance telephone call from an interexchange carrier to a local exchange carrier for termination to any of a Free Calling Party. Such services also include but are not limited to any direct connection service similar to the "Direct-Trunked Transport" service provided by CenturyLink pursuant to CenturyLink FCC Tariff No. 11.

19. "Underlying litigation" means any and all proceedings in *INS v. AT&T*, No. 14-cv-03439 (D.N.J. filed May 30, 2014).

20. "You," "your," or "INS" means Iowa Network Services, Inc. d/b/a Aureon Network Services; any of its parent, affiliated, or subsidiary companies; and employees, officers, directors, agents, representatives, and all other persons or entities acting or purporting to act on

their behalf, including without limitation any outside consultant or witness retained by them. In that regard, each and every interrogatory contained herein is directed at you.

INSTRUCTIONS

When responding to the following interrogatories, please comply with the instructions below:

1. Each interrogatory is continuing in nature and requires supplemental responses as soon as new, different, or further information is obtained that is related to answering the interrogatory.

2. Provide all information, including all documents, related to answering the interrogatory that are in your possession, custody, or control, regardless of whether such documents are possessed directly by you or by your employees, officers, directors, agents, representatives, or any other person or entity acting or purporting to act on their behalf.

3. In lieu of producing any requested information or documents that were previously provided to AT&T in the underlying litigation, or as part of the informal discovery process in this proceeding, identify when and how such information or documents were previously provided to AT&T.

4. In any interrogatory, the present tense shall be read to include the past tense, and the past tense shall be read to include the present tense.

5. In any interrogatory, the singular shall be read to include the plural, and the plural shall be read to include the singular.

6. In any interrogatory, the use of the conjunctive shall be read to include the disjunctive, and the use of the disjunctive shall be read to include the conjunctive.

7. Any document withheld from production on the grounds of a privilege is to be specifically identified by author(s), addressee(s), length, and date, with a brief description of the subject matter or nature of the document, and a statement of the privilege asserted.

8. If you contend that any part of your response to a particular Interrogatory contains trade secrets or other proprietary or confidential business or personal information, such contention shall not provide a basis for refusing to respond within the time required by the applicable rules. You shall respond according to and consistent with the terms of the Protective Order entered by the Commission on February 24, 2017.

9. Please begin the response to each request on a separate page.

10. Please restate each interrogatory before providing the response or objection.

11. Please specify the interrogatory in response to which any document, narrative response, or objection is provided. If a document, narrative response, or objection relates to more than one request, please cross reference.

12. For each separate interrogatory, identify the person(s) under whose supervision the response was prepared.

13. For any interrogatory consisting of separate subparts or portions, a complete response is required to each subpart as if the subpart or portion were propounded separately.

14. Produce any documents in the form of legible, complete, and true copies of the original documents as "original" is defined herein. To the extent that excel spreadsheets are produced, they should be provided in native format.

15. Please provide all documents in their native format, together with all metadata.

16. If you assert that documents or information related to answering an interrogatory are unavailable or have been discarded or destroyed, state when and explain in detail why any

such document or information was unavailable, discarded, or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy, or procedures under which such program was undertaken.

17. If any interrogatory cannot be answered in full after reasonable inquiry, provide the response to the extent available, state why the interrogatory cannot be answered in full, and provide any information within your knowledge concerning the description, existence, availability, and custody of any unanswered portions.

INTERROGATORIES

ATT-INS 1: **In its Tariff Filings, INS has reported changes in the percentage of call aggregation traffic transported on its network. In addition INS has produced worksheets (Aureon_01934–38 ; _02180–85 ; _02394–99 ;_02696–02708) reflecting [[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]] Please confirm that these calculations are the back-up for the statements in INS's Tariff Filings concerning the percentage changes in call aggregation traffic, provide an explanation of the methodology underlying the two sets of calculations set forth on the worksheets, explain the differences between those calculations and identify which calculations were used in connection with the statements in INS's Tariff Filings, identify the LECs to which the call aggregation traffic was directed, and state the volume of call aggregation traffic directed to each identified LEC**.

Explanation: The information sought in this interrogatory is directly relevant to AT&T's claim that the vast majority of the traffic for which INS has billed AT&T its tariffed CEA rates is not in fact legitimate CEA traffic but instead access stimulation traffic. *See* AT&T Complaint, Section II; AT&T Legal Analysis, Part I. This information is also directly relevant to AT&T's claim that INS is engaged in access stimulation (*see* AT&T Complaint, Section V; AT&T Legal Analysis, Part III), and to rebut INS's claim that it is unable to identify the traffic on its network that constitutes access stimulation traffic. *See* Iowa Network Services, Inc. Motion for Partial Summary Denial of AT&T Services, Inc.'s Forbearance Petition, WC Docket No. 16-363, at 13

(filed Dec. 2, 2016). This information is also needed to enable AT&T to understand the basis for the statements in INS's Tariff Filings regarding percentage changes in call aggregation traffic and to interpret the referenced work sheets that INS produced as part of the informal discovery process in this proceeding.

This information is not available to AT&T through any source other than INS. Indeed, the interrogatory relates to statements that INS has made in its Tariff Filings and to information contained in worksheets that INS produced as part of the informal discovery process. As such, INS is the only source of the requested information.

ATT-INS 2: Identify the entity or entities that INS has contracted with to provide either (a) the "High Volume Traffic Contract Tariff No.1" service referenced in INS's April 14, 2017 Tariff Filing (Transmittal No. 33) or (b) the "volume discount" service referenced in INS's May 16, 2017 Tariff Filing (Application No. 8 Transmittal No. 35); identify and produce all communications and correspondence concerning those services as well as all back-up material (including Excel Spreadsheets, in native format) that INS relied upon in making those filings; and explain how both the proposed rate for these services ($0.00649 per minute) and the estimated fully distributed cost ($0.00604 per minute) were developed.

Explanation: The information sought in this interrogatory is directly relevant to AT&T's claim that access stimulation traffic is not legitimate CEA traffic and that more efficient alternatives exist for delivering access stimulation traffic to the end office switches of CLECs engaged in access stimulation. *See* AT&T Complaint, Section II A and B; AT&T Legal Analysis, Part I.B. This interrogatory also seeks information directly relevant to AT&T's claims regarding rate manipulation, particularly claims relating to INS's calculation and allocation of network costs and its handling of what INS characterizes as "Uncollectible Revenues." *See* AT&T Complaint, Section V; AT&T Legal Analysis, Parts IV.B, C and E.

This information is not available to AT&T through any source other than INS. Indeed, the interrogatory relates directly to positions taken by INS in connection with its April 14, 2017 and May 16, 2017 Tariff Filings. As such, INS is the only source of the requested information.

ATT-INS 3: Confirm that INS has produced all agreements with LECs to which call aggregation (i.e., access stimulation) traffic was directed over the INS network during the period 2012 to the present, including but not limited to all agreements with [[BEGIN CONFIDENTIAL]] [redacted] **[[END CONFIDENTIAL]] To the extent that such material has not been produced, identify the withheld material and either state the basis for withholding that material or produce the withheld information.**

Explanation: The information sought in this interrogatory is directly relevant to AT&T's claim regarding INS's role in the growth of access stimulation in Iowa (*see* AT&T Complaint, Section I.D) and AT&T's claim that INS is subject to the Commission's rules regarding the rates that can be charged with respect to access stimulation traffic, particularly the issue of whether INS has entered into "revenue sharing agreements" with entities involved in access stimulation. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Part III. This information is not available to AT&T through any source other than INS.

ATT-INS-4: **State whether INS has had any dealings or other relationships with any entity that provides chat or conference call services or that is otherwise engaged in access stimulation, and for each such entity, state the nature of the relationship and identify and produce any communications, correspondence or other documentation relating to that relationship, including any agreements with any such entities.**

Explanation: The information sought in this interrogatory is directly relevant to AT&T's claim that INS is subject to the Commission's rules regarding the rates that can be charged with respect to access stimulation traffic, particularly the issue of whether INS has entered into revenue sharing agreements with any entities involved in access stimulation. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Part III. This information is not available to AT&T through any source other than INS.

ATT- INS-5: Confirm that all backup materials (including Excel Spreadsheets, in native format) that INS relied upon for the Tariff Filings it made to the FCC on or about June 16, 2010; June 26, 2012; June 17, 2013; June 14, 2014; and June 16, 2016 have been produced. To the extent that such material has not been produced, identify the withheld material and either state the basis for withholding that material or produce the withheld information.

Explanation: The information sought by this interrogatory is directly relevant to AT&T's claims that INS has engaged in rate manipulation. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Part IV. This information is not available to AT&T through any source other than INS. Indeed, this information constitutes the only way to understand and evaluate the reasonableness of INS's rates.

ATT-INS-6: In the Tariff Filings identified in Interrogatory #5, the supporting material purports to show a division of "Total Company" costs between the "Access Division" and "All Other". *See* Section 5, Part 64 Separations, Schedules S-1, S-2 and S-8. Identify by name each division or affiliate of INS included within "All Other" especially as it relates to the following accounts: 2210 (Central Office Switching Equipment), 2230 (Central Office Transmission Equipment), 2410 (Cable & Wire Facilities), 3100 (Accumulated Depreciation), 4100 (Net Current Deferred Operating Income Taxes), 6110 (Network Support Expenses), 6120 (General Support Expenses), 6210 (Central Office Switching Expenses), 6410 (Cable & Wire Facilities Expenses), 6510 (Other Property, Plant and Equipment Expenses), 6530 (Network Operations Expense), 6720 (General and Administrative), 6561 (Depreciation Expense – Plant in Service) and 7240 (Other Operating Taxes), and confirm that all documents supporting the calculation and allocation of costs on these Schedules have been produced. To the extent that such material has not been produced, identify the withheld material and either state the basis for withholding that material or produce the withheld information.

Explanation: The information sought by this interrogatory is directly relevant to AT&T's claims that INS has engaged in rate manipulation, particularly its claims regarding INS's calculation and allocation of network costs. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Parts IV.B and C. This information is not available to AT&T through any source other than INS. Indeed, this information constitutes the only way to understand and evaluate the reasonableness of INS's rates.

ATT-INS 7: **With respect to account 6410 (Cable & Wire Facilities Expenses), confirm that this account includes the lease costs that INS's Network Division charges to INS's Access Division, identify any other costs that are included in this account, explain the methodology pursuant to which the total lease cost charged by INS's Network Division is calculated, state whether during the period 2010 to 2017 that methodology changed (and, if so, explain the changes), and identify and provide copies of any documents relating to the calculation and allocation of the lease costs included in account 2410.**

Explanation: The information sought by this interrogatory is directly relevant to AT&T's claims that INS has engaged in rate manipulation, particularly its claims that the lease costs allocated to INS's Access Division are not just and reasonable. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Parts IV.B and C. This information is not available to AT&T through any source other than INS. Indeed, this information constitutes the only way to understand and evaluate the reasonableness of INS's rates.

ATT-INS 8: **In the Tariff Filings identified in Interrogatory #5, the supporting material purports to show a division of costs between "IntraLata", "InterLATA" and "Other". *See* Section 4, Part 36 Separations, Schedules S-1, S-2 and S-8. Explain what the "Other" category includes and confirm that all documents have been produced that support the attribution of amounts reported as associated with "InterLATA" versus "Other" for the following accounts: 2210 (Central Office Switching Equipment), 3100 (Accumulated Depreciation), 6120 (General Support Expenses), 6210 (Central Office Switching Expenses), 6410 (Cable & Wire Facilities Expenses), 6510 (Other Property, Plant and Equipment Expenses), 6530 (Network Operations Expense), 6720 (General and Administrative) and 6560 (Depreciation and Amortization Expenses). To the extent that such material has not been produced, identify the withheld material and either state the basis for withholding that material or produce the withheld information.**

Explanation: The information sought by this interrogatory is directly relevant to AT&T's claims that INS has engaged in rate manipulation, particularly its claims regarding the allocation of costs between interstate and intrastate traffic. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Part IV.D. This information is not available to AT&T through any source other than INS. Indeed, this information constitutes the only way to understand and evaluate the reasonableness of INS's rates.

ATT-INS 9: **In its 2008 Tariff Filing, INS noted that "[t]he higher than normal increase in interstate traffic for the projected test period results primarily from more accurately classifying the jurisdiction of both call aggregation traffic and the Percent Interstate Use (PIU") adjustments during the year 2008 based on new traffic recording equipment and the procedures implemented by INAD." INS also indicated that "[f]or the test period ended June 30, 2009, INAD projects 1.6 billion terminating conference call minutes generated by call aggregators of which 78% is projected to represent interstate calling versus 48% in 2007." State the specific reasons that INS was able to "more accurately" classify in 2008 "the jurisdiction of both call aggregation traffic" and the PIU adjustments and explain the basis of INS's estimate that 78% of the projected access stimulation traffic would be interstate. Also state whether further changes have been made in INS's procedures for estimating the PIU adjustments and identify, for each year since 2008, the percentage of call aggregation traffic that was estimated to be interstate as opposed to intrastate traffic.**

Explanation: The information sought by this interrogatory is directly relevant to AT&T's claims that INS has engaged in rate manipulation, particularly its claims regarding the allocation of costs between interstate and intrastate traffic. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Part IV.D. This information is also relevant to AT&T's claim that access stimulation traffic is not legitimate CEA traffic. *See* AT&T Complaint, Section II A; *see also* AT&T Legal Analysis, Part I.A.

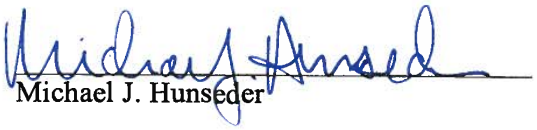
This information is not available to AT&T through any source other than INS. Indeed, this information constitutes the only way to understand and evaluate the reasonableness of INS's rates.

ATT-INS 10: **For each year since 2011, identify the number of DS-3 circuits that INS has provided and for each such circuit provide the name of the LEC or other carrier to which the circuit was provided, the length of haul and the rate charged including all rate components both recurring and non-recurring. Further, for each LEC to which call aggregation (i.e., access stimulation) traffic was directed over the INS network during the period 2012 to the present, state whether any of those LECs purchased DS-3 circuits from INS during that period and, if so, identify each such LEC and provide (by year for each such LEC) the volume of traffic routed over those DS-3 circuits and the revenue derived by INS from that traffic.**

Explanation: The information sought in this interrogatory is relevant to AT&T's claim that more efficient alternatives exist for delivering access stimulation traffic to the end office switches of CLECs engaged in access stimulation. *See* AT&T Complaint, Section II.B. In addition, this information is relevant to AT&T's claims regarding rate manipulation, particularly its claims regarding INS's calculation and allocation of network costs and the issue of whether INS's CEA service is cross subsidizing the service offerings of other INS's divisions. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Parts IV.B and C. Finally, this information is relevant to the issue of by-pass, and whether INS is facilitating and/or benefiting from LECs having taken steps to by-pass the INS network. *See* AT&T Complaint, Section II.B; AT&T Legal Analysis, Parts I.B and I.C.4.

This information is not available to AT&T through any source other than INS. Indeed, this information constitutes the only way to understand and evaluate whether INS's CEA service is cross subsidizing other INS service offerings.

Respectfully submitted,



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